



CALIFORNIA
BANKERS
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Section 1071 and Fair Lending: What's New?

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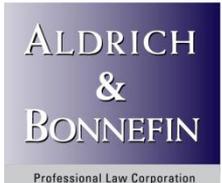


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What Will We Cover Today?

- Recent extension to compliance dates for the Section 1071 Small Business Lending (SBL) Data Collection Rule
- Very brief overview of the rule
- Expected changes to the SBL Data Collection Rule



What Will We Cover Today?

- Fair lending updates:
 - Trump’s Executive Order removing “disparate impact”
 - Trump’s new fair banking (unlawful debanking) Executive Order
 - The SBA’s debanking efforts



RECENT EXTENSION OF THE COMPLIANCE DATES FOR THE SBL DATA COLLECTION RULE



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CFPB's New Final Rule Extends Compliance Dates

- Published in the Federal Register on October 2, 2025 (90 FR 47514)
- It finalized the Interim Final Rule issued on June 18, 2025 (90 FR 25874)
- Becomes effective December 1, 2025



CFPB's New Final Rule Extends Compliance Dates

- Compliance dates are based on the number of “covered credit transactions” made to “small businesses” during the 2 specified calendar years (what I call the “***calculation period***”)



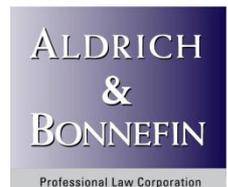
CFPB's New Final Rule Extends Compliance Dates

- Institutions may use any of the following “calculation periods”:
 - 2022 and 2023,
 - 2023 and 2024, or
 - 2024 and 2025



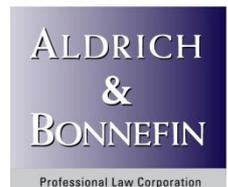
New Compliance Dates

- **Tier 1 lenders: July 1, 2026 (prev. July 2025)**
 - Covered financial institutions that originated at least 2,500 covered credit transactions for small businesses in both years of the calculation period
 - Begin collecting data for covered applications during from July 1 to December 31, 2026
 - Report the information collected during that period to the CFPB by June 1, 2027



New Compliance Dates

- **Tier 2 lenders: Jan. 1, 2027 (prev. Jan. 2026)**
 - Covered financial institutions that originated at least 500 covered credit transactions (but less than 2,500) for small businesses in both years of the calculation period
 - Begin collecting data for covered applications during from January 1 to December 31, 2027
 - Report the information collected during that period to the CFPB by June 1, 2028



New Compliance Dates

- **Tier 3 lenders: Oct. 1, 2027 (prev. Oct. 2026)**
 - Covered financial institutions that originated at least 100 covered credit transactions (but less than 500) for small businesses in both years of the calculation period
 - Begin collecting data for covered applications during from October 1 to December 31, 2027
 - Report the information collected during that period to the CFPB by June 1, 2028



Brief Background on SBL Data Collection Rule

- Dodd-Frank Act Section 1071 added small business loan data collection requirements to ECOA
- Requires lenders to compile, report and maintain specified information regarding certain credit applications made by:
 - Women-owned small businesses, minority-owned small businesses, and other small businesses
 - Must be in accordance with regulations issued by the CFPB



Brief Background on SBL Data Collection Rule

- Stated purpose of Section 1071 is:

*“to **facilitate enforcement of fair lending laws** and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses”*



Brief Background on SBL Data Collection Rule

- CFPB issued a proposed rule until September 1, 2021, to implement the SBL Data Collection Rule
- CFPB issued a final rule amending Regulation B to implement changes to ECOA made by Section 1071 on May 31, 2023
- Must collect and report on 20 data points, and demographic information (e.g., whether the small business is a minority-owned, women-owned, or LGBTQI+-owned)
- Became effective August 29, 2023



Brief Background on SBL Data Collection Rule

- Courts temporarily prevented the CFPB from enforcing the SBL Data Collection Rule due to challenges to the CFPB's funding structure



Brief Background on SBL Data Collection Rule

- The U.S. Supreme Court found in 2024 that the CFPB's funding structure is constitutional (*CFPB v. Cmty. Fin. Servs.*)
- On June 25, 2024, the CFPB extended the compliance dates (earliest compliance date was in July 2025)
- Now the compliance dates are further extended as previously discussed



Brief Background on SBL Data Collection Rule

- In July 2025, consumer protection associations filed a complaint with the U.S. District Court for the District of Columbia to force the CFPB to implement the rule
 - Still pending (may not challenge the October 2025 rule)



More Changes to the SBL Data Collection Rule are Expected



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Potential Changes to the SBL Data Collection Rule

- In a court filing on April 3, 2025, in *Revenue Based Finance Coalition v. CFPB* (U.S. D.C. FL), the CFPB stated:

“CFPB’s new leadership has directed staff to initiate a new Section 1071 rulemaking. The CFPB anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible.”

- The CFPB did not state when the proposed rulemaking would be released or what it would contain (it hasn’t been released yet)



Potential Changes to the SBL Data Collection Rule

- Areas that will likely be addressed in a future rulemaking:
 - Scope of covered institutions (may raise the threshold to exempt more community banks)
 - Number of data points that need to be collected (may be reduced significantly to be more consistent with the text of Section 1071 of the Dodd-Frank Act)



Potential Changes to the SBL Data Collection Rule

- Areas that will likely be addressed in future rulemaking (cont.):
 - Demographic information (may be reduced)
 - Compliance dates further extended?



Fair Lending Update



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Trump's Executive Order Removing Disparate Impact

- On April 23, 2025, President Trump issued an Executive Order titled “*Restoring Equality of Opportunity and Meritocracy*”
- In the EO, Trump criticized the usage of the **disparate impact** analysis and liability as running “*contrary to equal protection under the law*” and violating the Constitution



Trump's Executive Order Removing Disparate Impact

- The EO states that *“it is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.”*
- The EO goes on to instruct all federal agencies to deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability



Trump's Executive Order Removing Disparate Impact

- Since the EO, banking agencies have removed references to “disparate treatment” in their examination manuals/guides:
 - OCC Bulletin 2025-16
 - FDIC FIL-41-2025
 - NCUA 25-CU-04
 - FRB is probably next ...



Trump's Executive Order Removing Disparate Impact

- What is “disparate impact” in the fair lending context?
 - A lender can be found to discriminate against a borrower where the lender’s practice has a disproportionately negative impact on a prohibited basis (race, nationality, gender, etc.), even though there was no intent to discriminate, and the practice appears neutral on its face
 - Exception for practices that are a “legitimate business need” that cannot reasonably be achieved by a practice that has less discriminatory impact



Trump's Executive Order Removing Disparate Impact

- Should we no longer be concerned about “disparate impact”?
 - States may still enforce it
 - For example, in July 2025 the Massachusetts attorney general announced a \$2.5 million settlement with a student loan company
 - Alleged that lending practices violated fair lending laws
 - Including using AI models that lead to “disparate impact” on Black, Hispanic and non-citizen applicants and borrowers



Trump's Executive Order Removing Disparate Impact

- Should we no longer be concerned about fair lending **at all**?
 - In the OCC's bulletin implementing the EO, the OCC cautioned that it would continue to regularly conduct fair lending risk assessments, and take appropriate action with regard to "disparate treatment"
 - It is expected the other regulators will do the same



Trump's Fair Banking Executive Order

- On August 7, 2025, President Trump issued Executive Order No. 14331 titled “*Guaranteeing Fair Banking for All Americans*”
- Designed to prevent perceived discrimination in the banking system based on an individuals’ or businesses’ political beliefs, religious beliefs, or lawful business activities



Trump's Fair Banking Executive Order

- According to the EO, the U.S.'s policy on politicized or unlawful debanking is:

*“... no American should be denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views, and to **ensure that politicized or unlawful debanking** is not used as a tool to inhibit such beliefs, affiliations, or political views. Banking decisions must instead be made on the basis of individualized, objective, and risk-based analyses.”*



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Trump's Fair Banking Executive Order

- What is “politicized or unlawful debanking”?
 - An act by a financial institution “to directly or indirectly adversely restrict access to, or adversely modify the conditions of, accounts, loans, or other banking products or financial services of any customer or potential customer **on the basis of the customer’s or potential customer’s political or religious beliefs**, or **on the basis of the customer’s or potential customer’s lawful business activities that the financial service provider disagrees with or disfavors for political reasons.**”



Trump's Fair Banking Executive Order

- Regulatory actions
 - Banking agencies directed to remove “reputation risk” from manuals, guidance, etc., within 180 days from August 7, 2025
 - SBA must require reports from SBA lenders regarding politicized or unlawful debanking
 - Letter sent on August 26, 2025
 - Reviews must be conducted by December 5, 2025, with reports submitted to the SBA by January 4, 2026
 - On September 30, 2025, the SBA issued a letter with a template for responding for institutions with less than \$30 billion in total assets (*the letter also has some helpful guidance*)



Trump's Fair Banking Executive Order

- Regulatory actions (cont.)
 - Within 180 days after August 7, 2025, the Secretary of the Treasury is ordered to develop a comprehensive strategy for further measures to combat politicized or unlawful debanking



Trump's Fair Banking Executive Order

- Regulatory actions (cont.)
 - Within 120 days from August 7, 2025, the federal banking regulators must:
 - Conduct a review to identify financial institutions that have had any past or current, formal or informal, policies or practices that resulted in the financial institution engaging in politicized or unlawful debanking; and
 - Take remedial action (such as levying fines, issuing consent decrees, or imposing other disciplinary measures) against institutions found to have engaged in politicized or unlawful debanking that violates applicable law (e.g., ECOA and UDAP)



Trump's Fair Banking Executive Order

- Some comments:
 - Discrimination on the basis of religion is already prohibited under ECOA and California's Unruh Act



Trump's Fair Banking Executive Order

- Some comments (cont.):
 - Discrimination on the basis of political beliefs is not prohibited under ECOA or California's Unruh Act
 - How about under UDAP/UDAAP laws/regs?
 - In March 2022, the CFPB updated its examination manual to state that discrimination in consumer financial services could be considered an "unfair" practice
 - But in September 2023, a court found the policy exceeded the CFPB's UDAP/UDAAP authority, and the CFPB updated its exam manual to remove the policy



Trump's Fair Banking Executive Order

- Some comments (cont.):
 - Discrimination on the basis of political beliefs
 - A new fair lending standard?
 - If financial institutions have anything to report to the SBA or banking agencies regarding “politicized or unlawful debanking” activities:
 - Consult with legal counsel as to whether to respond or to challenge the request, and if responding then the content of the response
 - Delay reporting until the deadline (there may be lawsuits/legal challenges filed by then)



QUESTIONS?



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We're adjourned!

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