

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

REVENUE BASED FINANCE
COALITION,

Plaintiff,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU; and RUSSELL VOUGHT in his
official capacity as Acting Director of the
Consumer Financial Protection Bureau,¹

Defendants.

Civil Action No. 1:23-cv-24882-DSL

**UNOPPOSED MOTION TO STAY THE SECTION 1071 RULE AND
HOLD PROCEEDINGS IN ABEYANCE**

Given the recent change in federal administration and related developments at the Consumer Financial Protection Bureau (the “CFPB” or the “Bureau”) and in parallel litigation, Plaintiff Revenue Based Finance Coalition (“RBFC”) hereby moves to stay the Section 1071 Rule and toll the Rule’s compliance deadlines with respect to RBFC and its members. If the Court grants a stay, RBFC also moves to hold these proceedings in abeyance to conserve this Court’s resources and the resources of the parties while the stay is in effect. Counsel for RBFC contacted the Bureau’s counsel to seek their position on this motion and is authorized to state that the Bureau does not oppose the requested relief.

The compliance deadlines for the Section 1071 Rule at issue here are rapidly approaching, with the first compliance deadline in July of this year. As the compliance deadlines approach, RBFC’s members will incur significant and unrecoverable costs in order to comply with the Rule’s data collection and reporting requirements. Yet the CFPB has been directed not to make filings or

¹ On February 7, 2025, Russell Vought became the Acting Director of the CFPB. Accordingly, Acting Director Vought should replace Director Chopra on the Court’s docket as reflected in the caption of this motion. *See* Fed. R. Civ. P. 25(d).

appearances in litigation, other than to seek a pause to proceedings, and the scope and extent of the CFPB's future operations are uncertain. Given those circumstances, the Bureau has recently stated in multiple court filings in other challenges to the Section 1071 Rule that it does not oppose staying the Rule and tolling its compliance deadlines. Based on those representations, the Fifth Circuit stayed the Section 1071 Rule and tolled compliance deadlines for plaintiffs in that case on February 7, 2025, *Tex. Bankers Ass'n v. CFPB*, No. 24-40705, ECF No. 134 at 3 (5th Cir. Feb. 7, 2025), and just this week, the U.S. District Court for the Eastern District of Kentucky similarly stayed the compliance deadlines for plaintiffs in that case, *Monticello Banking Co. v. CFPB*, No. 6:23-cv-00148, ECF No. 48 at 5 (E.D. Ky. Mar. 11, 2025). RBFC respectfully requests that this Court provide the same relief here: staying the Section 1071 Rule and tolling the compliance deadlines for RBFC and its members for the length of time that the Fifth Circuit's stay order is in effect, or until further order of this Court. To conserve judicial resources, this Court should also hold these proceedings in abeyance until any stay ordered in this case is lifted.

BACKGROUND

For decades, the Bureau and its predecessors took the position that sales-based financing is not a form of "credit" subject to regulation under the Equal Credit Opportunity Act. *See* ECF No. 23 at 5, 17–18, 28. However, in May 2023, the Bureau reversed that longstanding position and published a final rule regulating sales-based financing as "credit." *See Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*, 88 Fed. Reg. 35,150 (May 31, 2023) ("Section 1071 Rule"). The Section 1071 Rule imposes staggered compliance dates which are applicable to many of RBFC's members, and the earliest deadline is rapidly approaching on July 18, 2025. *See Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates*, 89 Fed. Reg. 55,025 (July 3, 2024); ECF No. 23-1, Crockett Decl., ¶¶ 12–16 (sworn declaration of RBFC member describing the nature and extent of these compliance obligations).

RBFC filed suit in December 2023, contending that the Section 1071 Rule is arbitrary, capricious, contrary to law, and in excess of statutory authority. ECF No. 1. The parties cross-moved for summary judgment, and briefing was completed in May 2024. On February 17, 2025, Magistrate Judge Sanchez issued a Report and Recommendation ("R&R") on the cross-motions for summary judgment. ECF No. 68. RBFC moved for an extension of the deadline for filing objections to the R&R—in part based on the administration change and recent developments at

the CFPB. ECF No. 70. The CFPB did not oppose that motion, and the Court granted it, such that objections are now due on or before April 2, 2025. ECF No. 71.

As RBFC explained in its extension motion, recent developments at the Bureau have created considerable uncertainty about the Bureau's position on the Section 1071 Rule. Following his inauguration on January 20, 2025, President Trump designated Secretary of the Treasury Scott Bessent as the Acting Director of the CFPB on January 31.² Secretary Bessent then instructed CFPB staff to immediately cease much of their work, including requiring staff not to make any court filings or appearances in pending litigation other than to request a "pause" in proceedings.³ On February 7, President Trump designated Russell Vought as Acting Director of the CFPB, and shortly thereafter Vought issued an additional "stop work" order.⁴ According to news reports, the CFPB has also laid off employees.⁵

In the context of those directives, the CFPB's litigation counsel has repeatedly stated that the agency does not oppose staying the Section 1071 Rule and tolling its compliance deadlines. In *Texas Bankers*, the plaintiffs moved to stay the Section 1071 Rule pending appeal and to toll the Rule's compliance deadlines. *Tex. Bankers Ass'n v. CFPB*, No. 24-40705, ECF No. 9 (5th Cir. Oct. 30, 2024). After the change in administration, the Bureau filed a supplemental response to that motion on February 5, 2025, stating that the "CFPB does not oppose granting Plaintiffs'

² *Statement on Designation of Treasury Secretary Scott Bessent as Acting Director of the Consumer Financial Protection Bureau*, Consumer Financial Protection Bureau (Feb. 3, 2025), <https://www.consumerfinance.gov/about-us/newsroom/statement-on-designation-of-treasury-secretary-scott-bessent-as-acting-director-of-the-consumer-financial-protection-bureau/>.

³ See Evan Weinberger, *Bessent Freezes Most CFPB Work Upon Taking Control of Agency*, Bloomberg Law (Feb. 3, 2025), <https://news.bloomberglaw.com/banking-law/bessent-pauses-cfpb-litigation-new-rules-as-he-takes-the-reins>.

⁴ See Lauren Wamsley, *New CFPB Chief Closes Headquarters, Tells All Staff They Must Not Do 'Any Work Tasks'*, NPR (Feb. 10, 2025), <https://www.npr.org/2025/02/08/nx-s1-5290914/russell-vought-cfpb-doge-access-musk>.

⁵ See Evan Weinberger, *CFPB Agrees to Pause Rumored Workforce Layoffs, Data Purge*, Bloomberg Law (Feb. 14, 2025), <https://news.bloomberglaw.com/banking-law/cfpb-agrees-to-pause-expected-workforce-layoffs-data-deletion> (describing "planned staff cuts" at the Bureau, including a memorandum placing "all CFPB employees, except those asked to return to work by" senior officials, "on administrative leave"); see also Order, *Nat'l Treasury Employees Union v. Vought*, No. 1:25-cv-381, ECF No. 19, at 2 (D.D.C. Feb. 14, 2025) (issuing temporary restraining order prohibiting Acting Director Vought from "terminat[ing] any CFPB employee" and "issu[ing] any reduction-in-force to any CFPB employee").

motion for a stay pending appeal in part to stay obligations to comply with the rule, and toll compliance deadlines for 90 days.” *Id.*, ECF No. 129. Shortly thereafter, on February 7, the Fifth Circuit stayed the Section 1071 Rule pending appeal and tolled the Rule’s compliance deadlines until further order, but only for the plaintiffs in that case. *Id.*, ECF No. 134 at 3.

Similarly, in *Monticello Banking*, plaintiffs requested that the court stay all compliance deadlines for the Section 1071 Rule. *Monticello Banking Co. v. CFPB*, No. 6:23-cv-00148, ECF No. 45 at 3 (E.D. Ky. Feb. 7, 2025). On February 11, 2025, the Bureau informed the court that it “does not object to an extension of the rule’s compliance date for *all covered entities*, including the Plaintiffs in this case, for the length of time that the Fifth Circuit’s order staying the compliance deadlines for the parties in that case is in effect, or until further order of this Court.” *Id.*, ECF No. 46 (emphasis added). On March 11, the court stayed the Section 1071 Rule’s compliance deadlines for the plaintiffs in the *Monticello Banking* case and administratively stayed the case (i.e., held proceedings in abeyance). *Id.*, ECF No. 48 at 5.

Here, too, counsel for the CFPB has informed RBFC that it does not oppose RBFC’s request to stay the Section 1071 Rule, toll the compliance deadlines, and hold this case in abeyance while the stay remains in effect.

DISCUSSION

I. This Court Should Stay the Section 1071 Rule and Toll All Compliance Deadlines as to RBFC and Its Members.

In the other two cases challenging the Section 1071 Rule, the CFPB has not opposed the plaintiffs’ requests to stay the Rule and toll its compliance deadlines, and the courts have granted the requested relief as to the plaintiffs in those cases. *See Tex. Bankers Ass’n*, No. 24-40705, ECF No. 134 at 3; *Monticello Banking*, No. 6:23-cv-00148, ECF No. 48 at 5. Although the courts did not issue opinions in connection with their orders, the reasons for the rulings are obvious enough. As discussed above, the CFPB’s actions in recent weeks—including multiple stop work orders and efforts to “pause” the agency’s operations pending a full review of rulemaking and enforcement efforts—raise significant uncertainty regarding the Bureau’s position on the Section 1071 Rule. Yet the Rule’s compliance deadlines remain on the books and are rapidly approaching, with the first compliance deadline beginning in July 2025. When regulated parties become subject to the Rule, they will be irreparably harmed in the form of substantial compliance costs that cannot be recovered. *See, e.g., Georgia v. President of the U.S.*, 46 F.4th 1283, 1302 (11th Cir. 2022) (holding that “unrecoverable costs of compliance constitute irreparable harm” for regulated

entities). A temporary stay of the Rule and a tolling of the Rule’s compliance deadlines is an equitable mechanism for ensuring that regulated parties will not be forced to comply with a challenged Rule whose viability is in doubt. Such a stay would preserve a longstanding status quo in which sales-based financing has not been classified as “credit” under the Equal Credit Opportunity Act.

For the same reasons, the same relief is warranted here for RBFC and its members. Many RBFC members subject to the upcoming deadlines have incurred and will continue to incur significant compliance costs resulting from the Section 1071 Rule, such as hiring and training additional employees, creating and maintaining independent software programs, utilization of cloud-based storage and support, implementation of data security measures, and development of procedures for providing collected data to the Bureau. *See* ECF No. 23-1, Crockett Decl. ¶¶ 13–15. And some of RBFC’s members are subject to the initial July 2025 compliance deadline. *See, e.g., id.* ¶¶ 7–8, 11–12.⁶

Therefore, for the same reasons that the courts in *Texas Bankers* and *Monticello Banking* stayed the Section 1071 Rule and tolled all deadlines as to the plaintiffs in those lawsuits—and because the Bureau does not oppose a stay here—this Court should stay the Section 1071 Rule and toll the compliance deadlines for RBFC and its members as long as the Fifth Circuit’s stay order is in effect or until further order from this Court.

II. This Court Should Hold These Proceedings in Abeyance While the Stay Remains in Effect.

If the Court grants the requested stay of the Section 1071 Rule and tolling of its compliance deadlines, the Court should also hold these proceedings in abeyance in order to conserve judicial resources. Courts frequently hold proceedings in abeyance after a change in presidential administration when there is uncertainty around the new administration’s position on the challenged agency rule. *See, e.g., Sierra Club v. Env’t Prot. Agency*, 47 F.4th 738, 742 (D.C. Cir. 2022) (granting abeyance motion while the agency reviewed the challenged rules); *Save Jobs USA v. Dep’t of Homeland Sec.*, 942 F.3d 504, 508 (D.C. Cir. 2019) (describing abeyance motion

⁶ Although Magistrate Judge Sanchez recommends denying RBFC’s motion for summary judgment, the R&R is not binding or final and does not prevent this Court from staying the Section 1071 Rule and tolling its compliance deadlines, particularly in light of the Bureau’s express non-opposition to the requested relief here.

previously granted to afford the new presidential administration time to consider the challenged rule). Because the Bureau could take further action after its review of the Section 1071 Rule that may moot this case or otherwise obviate the need for the Court to determine this case on the merits, and because the broader approach taken by the Bureau's new leadership suggests that such a change in position is a meaningful possibility, an abeyance is likely to conserve both the Court's resources and the resources of the parties while the Bureau reviews the Rule and determines its next steps. *See Georgia ex. rel. Olens v. McCarthy*, 833 F.3d 1317, 1321 (11th Cir. 2016) (recognizing that an abeyance may support the "conservation of judicial resources" (citation omitted)). Indeed, the Bureau has already once delayed the Rule's compliance deadlines (during the prior administration) based on litigation developments. *See* 89 Fed. Reg. 55,025 (July 3, 2024).

An abeyance is also warranted here because CFPB's litigation counsel has been instructed not to make filings or appearances in litigation (or otherwise carry out the Bureau's operations) other than to request a pause in proceedings. RBFC should not be required to vigorously pursue its case when CFPB's counsel have been directed not to take any action to defend the agency in litigation. And the Bureau would not be prejudiced by the abeyance, as evidenced by its non-opposition to this motion. Accordingly, this Court should hold these proceedings in abeyance as long as any stay ordered in this case remains in effect.⁷

CONCLUSION

For the reasons set forth above, RBFC respectfully requests that the Court stay the Section 1071 Rule and toll its compliance deadlines for RBFC and its members for the length of time that the Fifth Circuit's stay order is in effect, or until further order of this Court. RBFC also requests that the Court hold these proceedings in abeyance while any stay ordered in this case remains in effect.

⁷ To clarify, RBFC seeks an abeyance of these proceedings only if the Court grants a stay of the Section 1071 Rule. If the Court decides to deny a stay, RBFC would be prejudiced by an abeyance because the Rule's compliance deadlines would still be in effect with respect to RBFC's members (but not to other regulated businesses involved in the *Texas Bankers* and *Monticello Banking* lawsuits) and would subject many of RBFC's members to significant compliance costs. Thus, if the Court denies a stay, RBFC intends to continue actively litigating this case.

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March 13, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(a)(2), counsel for RBFC made reasonable efforts to confer with counsel for the CFPB by email on February 12 and February 14, 2025. Opposing counsel responded on February 24, 2025, stating that Defendants do not oppose the requested relief.

/s/ Paul F. Hancock _____

Paul F. Hancock

March 13, 2025

Counsel for Plaintiff

Revenue Based Finance Coalition

CERTIFICATE OF SERVICE

I hereby certify that, on March 13, 2025, I caused the foregoing motion to be filed with the Clerk of the Court of the United States District Court for the Southern District of Florida using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

March 13, 2025

/s/ Paul F. Hancock
Paul F. Hancock

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[PROPOSED] ORDER

Before the Court is the Unopposed Motion to Stay the Section 1071 Rule and Hold Proceedings in Abeyance, filed by Plaintiff Revenue Based Finance Coalition (“RBFC”). Having considered the Motion, relevant docket entries, and applicable law, Plaintiff’s Motion is **GRANTED**.

It is therefore **ORDERED** that the Section 1071 Rule, *see* 88 Fed. Reg. 35,150 (May 31, 2023), and all associated compliance deadlines, *see* 89 Fed. Reg. 55,025 (July 3, 2024), are **STAYED** with respect to RBFC and its members. The stay shall remain in effect for the length of time that the stay order entered by the U.S. Court of Appeals for the Fifth Circuit remains in effect in *Tex. Bankers Ass’n v. CFPB*, (5th Cir. No. 24-40705), or until further order of this Court.

It is further **ORDERED** that all compliance deadlines associated with the Section 1071 Rule are hereby **TOLLED** and extended as to RBFC and its members for the length of time that the stay with respect to RBFC and its members remains in effect.

¹ On February 7, 2025, Russell Vought became the Acting Director of the CFPB. Accordingly, Acting Director Vought replaces Director Chopra on the Court’s docket as reflected in the caption of this motion. *See* Fed. R. Civ. P. 25(d).

It is further **ORDERED** that the proceedings in the above-captioned matter will be **HELD IN ABEYANCE** while the stay with respect to RBFC and its members remains in effect, or until further order of this Court.

DONE AND ORDERED in the Southern District of Florida on _____, 2025.

HON. DAVID S. LEIBOWITZ
UNITED STATES DISTRICT JUDGE

cc: counsel of record