



August 7, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: *Texas Bankers Association, et al. vs. Consumer Financial Protection Bureau – Request for Stay*

Dear Director Chopra:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) and the Credit Union National Association (CUNA), we are writing in response to the Order issued by the U.S. District Court for the Southern District of Texas granting a preliminary injunction enjoining the Consumer Financial Protection Bureau (CFPB or Bureau) from enforcing its Final Rule on Small Business Lending Under the Equal Credit Opportunity Act (the Final Rule).¹ NAFCU and CUNA represent America's not-for-profit credit unions and their 137 million members. We respectfully request that you consider staying enforcement and implementation of the Final Rule for all covered financial institutions until after the Supreme Court's final decision in *Community Financial Services Association of America, Ltd. v. CFPB*.²

The Order grants relief only to members of the Texas Bankers Association and American Bankers Association. Additionally, other bank trade associations have since motioned to intervene in the lawsuit, noting that the existing parties do not represent and protect the interests of the Proposed Intervenor.³ While the Court determined that a limited injunction was appropriate based on the facts offered by plaintiffs, we ask that you consider a broader set of circumstances that prioritizes consistency in the implementation of this rule as the collection of reliable data regarding small business lending requires consistent reporting among covered financial institutions to ensure fair and accurate peer comparisons. As the Final Rule acknowledges, "smaller financial institutions may face particular difficulties that justify providing them additional time to comply with the

¹ See Order Granting In-Part and Denying In-Part Plaintiffs' Motion for Preliminary Injunction, *Texas Bankers Ass'n, et al. v. CFPB*, No. 7:23-cv-00144 (S.D. Tex. July 31, 2023), available at <https://www.aba.com/-/media/documents/amicus-briefs/073123-texas-aba-cfpb-motion.pdf?rev=85084377aca646acbe9daef085bae256>.

² 51 F.4th 616, 623 (5th Cir. 2022), cert. granted, 215 L. Ed. 2d 104, 143 S. Ct. 978 (2023).

³ See Unopposed Emergency Motion for Leave to Intervene and Brief in Support, *Texas Bankers Ass'n, et al. v. CFPB*, No. 7:23-cv-00144 (S.D. Tex. July 31, 2023), available at https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2023/08/US_DIS_TXSD_7_23cv144_Unopposed_MOTION_for_Leave_to_File_Intervene_by_Te.pdf (Texas First Bank, Independent Bankers Association of Texas, and Independent Community Bankers of America filed the motion to intervene).

rule.”⁴ With this principle in mind, the CFPB should consider the competitive impact of granting compliance relief only to certain banks.

From a practical standpoint, the Order provides plaintiffs and their members with substantial regulatory relief—allowing banks to extend implementation timeframes and postpone the upfront cost of system upgrades and staff training. Many credit unions are afforded no such relief despite being, on average, substantially smaller than the average bank. In a blog published in July 2022, you wrote “the CFPB is looking to identify the roadblocks that small financial institutions and new entrants face when challenging dominant players.”⁵ Your statement aligns with the CFPB’s statutory mandate to promote fair, transparent, and competitive markets. Given the effect of the Order on the overall distribution of compliance burdens across the financial sector, we ask that you consider broader relief. Specifically, we ask that you take action to provide the same injunctive relief to all covered financial institutions as afforded to the plaintiffs in the Order.

Lastly, with the Supreme Court scheduled to hear arguments in *Community Financial Services Association of America, Ltd. v. CFPB* in early October, extending injunctive relief to all covered financial institutions under the same terms as the Order should not cause significant disruption to the Bureau’s own implementation timeline. Furthermore, broadly applicable injunctive relief will help simplify communications and actions that may be required when that case is decided.

Thank you for considering our request. If you have any questions, please do not hesitate to contact us.

Sincerely,



Ann C. Petros
Vice President of Regulatory Affairs



Alexander Monterrubio
Deputy Chief Advocacy Officer &
Managing Counsel

⁴ CFPB, Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150, 35439 (Aug. 29, 2023).

⁵ CFPB, “Promoting competition in our financial markets” (July 11, 2022), *available at* <https://www.consumerfinance.gov/about-us/blog/promoting-competition-in-our-financial-markets/>.