UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

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THE COMMERCIAL BANK
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Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION BUREAU and ROHIT CHOPRA in his official capacity as Director of the CFPB,
1700 G. St. NW, Washington, DC 20552

Defendants.

Civil Action No. 3:24 cv 792-CWR-LGI

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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On December 12, 2024, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued its rule titled Overdraft Lending: Very Large Financial Institutions ("Rule" or "Final Rule"),[1] which overturns 55 years of precedent to subject discretionary overdraft services to the Truth in Lending Act's ("TILA") Regulation Z. The Rule classifies discretionary overdraft services offered by "Very Large Financial Institutions" ("VLFIs") (financial institutions with more than $10 billion in assets) as "credit." Although the CFPB's public statements portray the Rule as merely requiring that VLFIs "[d]isclose the terms of their overdraft loan just like other loans,"[2] in reality, the Rule restricts the fees VLFIs may charge for these services and dictates the features of overdraft services that exceed either $5 or a misnamed "breakeven" calculation that undercounts the actual cost of offering discretionary overdraft services. *See* (Compl. ¶¶ 63–65.) An injunction is warranted pending the Court's review of the Rule's legality because the CFPB lacks authority, under TILA or any other statute, to issue the Rule, and because the Rule poses a substantial threat of irreparable harm to Plaintiffs and, as applicable, their members and the consumers they serve.

Discretionary overdraft services have been offered by financial institutions, both large and small, for decades. Financial institutions retain the discretion to pay, or decline, items that would overdraw the customer's account such as checks, debit card transactions, and ATM withdrawals. These services differ from lines of credit linked to a checking account that provide overdraft protection, pursuant to a written agreement, by automatically transferring funds from the line of credit to the checking account to cover a shortfall. A financial institution's act of covering overdrafts saves customers the inconvenience of having a declined transaction and provides

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[1] The Final Rule is available at https://files.consumerfinance.gov/f/documents/cfpb_overdraft-final-rule_2024-12.pdf.

[2] CFPB Press Release, *CFPB Closes Overdraft Loophole to Save Americans Billions in Fees* (Dec. 12, 2024), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-closes-overdraft-loophole-to-save-americans-billions-in-fees/.

customers options to manage their finances. And because discretionary overdraft services are typically offered as a standard checking account feature and without requiring underwriting, they provide a vital source of liquidity for those who lack consistent access to credit.

The CFPB's Final Rule subjects discretionary overdraft services to a new and complex substantive regime and reverses 55 years of consistent interpretation of TILA by the agencies charged with enforcing it. For over 40 years, the Board of Governors of the Federal Reserve System ("Board") consistently interpreted TILA to conclude that discretionary overdraft services lack the hallmarks of a credit transaction as defined by the statute and are excluded from the credit disclosure requirements of TILA because consumers have no right to overdraw their account or defer repayment. That interpretation remained in place for the next 14 years after Congress transferred regulatory authority from the Board to the CFPB.

The CFPB's reinterpretation of TILA and Regulation Z cannot be reconciled with the language or design of the statute. The CFPB lacks the authority to regulate discretionary overdraft services under TILA because these services, as the Board concluded, fall outside TILA's definitions of "credit" and "finance charge." Further, TILA is a disclosure statute; it does not regulate the substantive terms of consumer credit offerings. Yet the CFPB's Final Rule goes far beyond mandating disclosures; the Rule significantly alters the terms by which VLFIs can offer discretionary overdraft services, with far-reaching consequences for the over one in four households that use discretionary overdraft services annually. Because the CFPB lacks statutory authority to issue the Final Rule, Plaintiffs have a high likelihood of success on the merits of their legal challenge, thereby satisfying the first of two main requirements for a preliminary injunction. The second main requirement—substantial threat of irreparable injury—is also satisfied. The attached declarations from Plaintiffs and, as applicable, their members attest to the costs financial

institutions must incur now if they are to comply with the Final Rule, whose effective date is October 1, 2025. These costs cannot be recovered if the Rule is found to exceed the CFPB's authority under TILA. Plaintiffs likewise meet the third and fourth requirements—harm to the opposing party and to the public—as the CFPB will not be harmed by a delay, nor will the public be injured by entry of a preliminary injunction that maintains the status quo as it has existed for more than 55 years. The Court should grant Plaintiffs' motion for a preliminary injunction.

BACKGROUND

I. Discretionary Overdraft Services

Discretionary overdraft services provide short-term liquidity to customers who overdraw their accounts. (Compl. ¶¶ 3, 128.) Financial institutions may pay, as a courtesy, items that would result in an account being overdrawn in exchange for a fee disclosed in the customer's account agreement. (*Id.* ¶ 2.) The CFPB has acknowledged that, for this type of overdraft service, "the financial institution typically pays overdrafts up to certain limits but does not agree in advance to pay the overdrawn transactions, reserving discretion to decline any given overdraft transaction."[3]

Typically, discretionary overdraft services are not governed by a separate agreement but are explained in the customer's account agreement, along with the financial institution's other standard deposit account services. (*Id.* ¶ 38.) The CFPB acknowledges that discretionary overdraft services are usually provided as a standard benefit to checking account customers, with limits based on account type and the customer's banking history. Final Rule at 12. When a financial institution decides to pay an overdraft, it "typically assesses a flat fee for each overdraft transaction [it] pays." *Id.* at 11. Generally, the financial institution reserves the right to immediately recover

[3] Final Rule, *Overdraft Lending: Very Large Financial Institutions*, at 11 (Dec. 12, 2024) ("Final Rule"), *available at* https://files.consumerfinance.gov/f/documents/cfpb_overdraft-final-rule_2024-12.pdf.

the costs of the overdraft and accompanying fee by debiting any incoming deposit to the asset account and removing the negative balance on the account. *Id.* at 100, 177, 186.

II. The Truth in Lending Act and Its Implementing Regulation.

Congress enacted TILA in 1968, at a time when "the use of consumer credit was expanding at an extremely rapid rate."[4] *Mourning v. Family Publ'n Servs., Inc.*, 411 U.S. 356, 363 (1973) (reciting TILA's history). "Because of the divergent, and at times fraudulent, practices by which consumers were informed of the terms of the credit extended to them, many consumers were prevented from shopping for the best terms available." *Id.* (citing House and Senate reports).

Consistent therewith, the declared purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. § 1601(a). As the Senate Banking Committee explained, TILA would "not in any way regulate the credit industry" or seek "to impede or retard the growth of consumer credits." S. Rep. No. 90-392 at 1–2 (1967). Courts have uniformly recognized that TILA is principally a disclosure statute. *See, e.g.*, *Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114, 1120 (9th Cir. 2009) ("TILA is only a disclosure statute and does not substantively regulate consumer credit."); *In re Capital One Bank Credit Card Interest Rate Litig.*, 51 F. Supp. 3d 1316, 1348 (N.D. Ga. 2014) (same). While Congress has added certain substantive provisions to TILA since its enactment,[5] the CFPB's rulemaking authority under TILA remains tied to the statute's original and predominant purpose of ensuring adequate

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[4] Unless otherwise noted, all internal citations, quotations, and punctuation are omitted.

[5] *See, e.g.*, 15 U.S.C. § 1637(c)(8) (limiting the availability of credit cards to customers under the age of 21); 15 U.S.C. § 1666i-1 (imposing limits on the timing of increases in credit card interest rates); 15 U.S.C. § 1637(j) (banning "two-cycle" billing for credit card customers). These provisions demonstrate that, when Congress wants to add substantive limitations on the extension of credit in TILA, it does so expressly.

disclosure of credit terms. *See* 15 U.S.C. § 1604(a) ("The Bureau shall prescribe regulations to carry out the purposes of this subchapter."). Therefore, "courts have consistently read TILA as a disclosure statute—not a statute that allows the bureau to substantively regulate credit." *PayPal, Inc. v. CFPB*, 512 F. Supp. 3d 1, 11 (D.D.C. 2020), *rev'd in part on other grounds*, 58 F.4th 1273 (D.C. Cir. 2023).

For purposes of this case, the key terms of TILA are definitional. The statute defines what constitutes "credit" and what constitutes a "finance charge." "Credit" is "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." 15 U.S.C. §1602(f). The term "finance charge" is "the sum of all charges . . . imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a). As explained *infra*, at 11, discretionary overdraft services, which provide no right to incur debt and defer its payment, are not "credit" and thus fall outside the scope of the statute.

Congress initially gave the Board authority to implement the statute. *Mourning*, 411 U.S. at 365. The Board promulgated "Regulation Z," and administered the regulation for more than 40 years. During that time, the Board consistently contended that discretionary overdraft services were not "credit" as that term is defined by TILA and, accordingly, excluded discretionary overdraft services from the requirements of Regulation Z. *See* (Compl. ¶¶ 80–89 (describing the Board's consistent understanding that discretionary overdraft services lacked a credit feature).)

In 2010, as part of the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Congress transferred responsibility for promulgating rules under TILA to the CFPB, effective July 21, 2011. 12 U.S.C. §§ 5581(b)(1), (d); Designated Transfer Date, 75 Fed. Reg. 57,252 (Sept. 20, 2010). On December 22, 2011, the CFPB re-promulgated Regulation Z as an interim final rule, making no relevant substantive changes to the

text of the provisions governing credit. *See* Truth in Lending (Regulation Z), 76 Fed. Reg. 79,768. On April 28, 2016, the CFPB adopted as final the December 22, 2011 notice, as subsequently amended, and left that rule in place thereafter. *See* 76 Fed. Reg. 79,768 (Dec. 22, 2011); 81 Fed. Reg. 25,323 (April 28, 2016). Accordingly, from 2010 until earlier this year, the Bureau adhered to the same approach taken by the Board since it promulgated Regulation Z in 1969.

Despite amending TILA on dozens of occasions since Regulation Z was promulgated, including through the enactment of major legislation such as the Credit Card Accountability, Responsibility and Disclosure ("CARD") Act and Dodd-Frank Act, Congress has left undisturbed the Board's reading of TILA with respect to discretionary overdraft services. *See* (Compl. ¶ 90.)[6]

III. The Final Rule

As discussed in the Complaint, at ¶¶ 57–68, the Final Rule covers discretionary overdraft services not previously subject to the requirements in TILA and Regulation Z. While phrased by the CFPB as merely "updating two regulatory exceptions from the statutory definition of finance charge," Final Rule at 6, the CFPB has essentially rewritten the statute. The Rule creates a new type of credit, not recognized in TILA or Regulation Z, called "overdraft credit" that applies only to financial institutions over $10 billion that charge more than the CFPB's fee cap (either $5 or a VLFI's "breakeven" cost).

The Final Rule creates an exemption for what the Bureau calls a "true courtesy" overdraft fee, meaning overdraft credit "provided at or below costs and losses as a true courtesy to consumers." Final Rule at 28. To establish that its fees are not above "breakeven," a VLFI may

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[6] Discretionary overdraft services, however, are not unregulated. *See* (Compl. ¶ 5.) They are regulated under Regulation DD, implementing the Truth in Savings Act ("TISA"), and Regulation E, implementing the Electronic Fund Transfer Act ("EFTA"), the latter which requires that a consumer opt into one-time debit card and ATM transactions. The Board chose to regulate these services through these Regulations, rather than Regulation Z, because they lack a "credit feature." *See* Electronic Fund Transfers, 74 Fed. Reg. 59,033, 59,055 (Nov. 17, 2009).

either (1) utilize an arbitrary "benchmark" fee (i.e., an agency cap of $5 set by the Final Rule), or (2) calculate its own "breakeven" cost using standards that the Rule provides. If a VLFI chooses to calculate its own "breakeven" cost, it may only consider the pro rata share of its "total direct costs and charge-off losses for providing [discretionary overdraft services] in the previous year." *Id.* at 124. This includes the institution's cost of funds and operational costs that are "specifically traceable" to its overdraft program, but does not include charge-off losses due to unauthorized use, electronic funds transfer errors, billing errors, returned deposit items, or rescinded provisional credit. 12 C.F.R. § 1026.62(d)(2).[7] In short, most VLFIs that choose to offer discretionary overdraft services in their current form will have to do so at a loss. *See* (Compl. ¶¶ 63–65.)

VLFIs offering overdraft services priced above the CFPB's price cap are deemed to have offered credit and are subject, therefore, to Regulation Z. As a result, these VLFIs are subject to requirements applicable to open-end credit products, including, in some cases, calculation and disclosure of annual percentage rates ("APRs"), periodic statements, due date requirements, and account opening disclosures. (*Id.* ¶ 66.) The Final Rule also imposes several new substantive restrictions on the terms under which such products can be offered if the fees exceed the price cap. Most notably, it requires that the overdraft balance be held in a separate "covered overdraft credit account." (*Id.* ¶ 67.) The CFPB rests this substantive requirement on its general rulemaking authority in section 105(a) of TILA and argues that imposing this substantive requirement furthers TILA's purpose of providing adequate disclosure of credit terms. Final Rule at 136.

If the consumer's "covered overdraft credit account" can be accessed by a debit card or account number, even more substantive restrictions apply. *See* (Compl. ¶ 68.) That is because the Rule applies the provisions of the CARD Act, as implemented through Regulation Z, to the "above

[7] Citations of the Code of Federal Regulations include those that the CFPB has updated in the Final Rule

breakeven overdraft credit" by "add[ing] a new definition of 'hybrid debit-credit card'" within Regulation Z, and amending the definitions of "credit card" and "credit card account." Final Rule at 139. Thus, to offer above-breakeven overdraft credit, a VLFI must make an "ability to pay" determination prior to extending credit if the account can be accessed by a debit card (as most accounts can). *Id.* at 30, 100. The CARD Act also imposes a host of other substantive limitations, including limitations on "certain fees on transactions that are declined due to nonsufficient funds, and various requirements related to rate changes." *Id.* at 8.

As a practical matter, the operational costs of the new regulatory framework will either (i) cause VLFIs to offer discretionary overdraft services at a loss using the benchmark fee—essentially an illegal government price cap; (ii) prompt VLFIs to stop offering discretionary overdraft services in whole or in part; or (iii) cause VLFIs to offer a substantively different type of overdraft service that more closely mirrors an overdraft line of credit and whose availability will depend on the consumer's creditworthiness. Many consumers who rely on discretionary overdraft services would not qualify for overdraft credit under the Rule, a fact the CFPB has conceded. *Id.* at 21–22. Not surprisingly, then, the CFPB has explicitly recognized the possibility that VLFIs would restrict the provision of discretionary overdraft services as a result of the Final Rule. *Id.* at 221. Survey data confirm the likelihood that VLFIs would respond to the Rule by reducing overdraft liquidity, thereby affecting customers who need it the most. (Compl. ¶¶ 123–132.) A Consumer Bankers Association survey revealed that if the CFPB were to cap discretionary overdraft fees at $3 or $7, most banks surveyed would reduce overdraft liquidity by 76–100%. (*Id.* ¶ 124.) Such actions would invariably hurt consumers.

ARGUMENT

STANDARD FOR INJUNCTIVE RELIEF

The Administrative Procedure Act ("APA") provides that "the reviewing court" may issue equitable relief "to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705; *see Texas Bankers Ass'n v. OCC*, 728 F. Supp. 3d 412, 429–30 (N.D. Tex. 2024) (issuing a preliminary injunction and ordering that "[t]he effective date of April 1, 2024, along with all other implementation dates, are hereby extended, day for day, for each day this injunction remains in place"). "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). A court adjudicating a motion for preliminary relief examines four factors: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable injury absent the injunction; (3) the balance of harms to the parties; and (4) the public interest.[8] *Id.* The first two factors "are the most critical." *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1135 (5th Cir. 2021). The latter two merge when the government is a party. *Career Colls. & Schs. of Tex. v. United States Dep't of Educ.*, 98 F. 4th 220, 254 (5th Cir. 2024). Where, as here, the likelihood of success on the merits is very high, "a much smaller quantum of injury will sustain an application for [a] preliminary injunction." *Fed'n of Americans for Consumer Choice, Inc. v. DOL*, --- F. Supp. 3d ----, 2024 WL 3554879, at *15 (E.D. Tex. July 24, 2024); *see also Career Colls. & Schs. of Texas*, 98 F.4th at 233 ("The first two factors of the traditional standard are the most critical. And there is authority that likelihood of success on the merits is the most important of the preliminary injunction factors.").

[8] The same four requirements for imposing a preliminary injunction also apply to a § 705 stay. *See Tennessee v. Becerra*, --- F. Supp. 3d ----, 2024 WL 3283887, at *5 (S.D. Miss. July 3, 2024).

I. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR LAWSUIT.

A "substantial" likelihood of success does not mean "certain." The party must only demonstrate "at least some likelihood of success." *Ryan LLC v. FTC*, --- F. Supp. 3d ----, 2024 WL 3297524, at *6 (N.D. Tex. July 3, 2024) (quoting *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 626 (5th Cir. 2017)). This test is easily met here. The Final Rule is fatally flawed for many reasons, two of which are the subject of this motion.

First, the Rule directly conflicts with TILA's definitions of "credit" and "finance charge," and thereby exceeds the CFPB's authority under the statute. Those definitions do not apply to discretionary overdraft services because consumers have no right to overdraw their account or defer repayment of the overdraft. Because Congress did not authorize the agency to rewrite TILA or render statutory terms meaningless, the CFPB's Final Rule exceeds its authority.

Second, TILA is narrowly drawn "to assure a meaningful disclosure of credit terms." 15 U.S.C. § 1601(a). The CFPB's Final Rule, however, imposes a new and complex set of substantive rules (including fee caps) on overdraft fees and substantive restrictions governing the terms under which discretionary overdraft services can be offered above a $5 fee cap or "breakeven" price. Because TILA is only a disclosure statute, the CFPB oversteps its authority by imposing fee caps and other substantive restrictions.

The major questions doctrine buttresses each of the above statutory-authority arguments. When, as here, an agency promulgates a rule with substantial political and economic effects, it must have clear authorization from Congress. As discussed, TILA lacks any, much less clear, authorization for the CFPB's substantive regulation of discretionary overdraft services.

A. The CFPB Exceeds Its Statutory Authority by Seeking to Regulate Discretionary Overdraft Services as Credit.

In reviewing agency action under the APA, courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and should "set aside any action inconsistent with the law as they interpret it." *Fed'n of Americans for Consumer Choice*, 2024 WL 3554879, at *10 (citing *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2261, 2273 (2024)). A court "should no longer defer to an agency's interpretation of a statute but should decide for itself 'whether the law means what the agency says.'" *Id.* Therefore, the court must begin, as all courts do, with the statute's text, since "every statute's meaning is fixed at the time of enactment." *Loper Bright*, 144 S. Ct. at 2266.

TILA is a statute that is limited to the regulation of credit. The statute's purpose is a narrow one: to ensure that all creditors disclose credit information in a uniform manner. The key terms—"credit" and "finance charge"—are expressly defined by the statute, and discretionary overdraft services clearly do not fall within these definitions.

Under TILA, "credit" is "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." 15 U.S.C. § 1602(f). Financial institutions, however, have discretion to pay or not pay overdrafts, a fact the CFPB concedes. *See* Compl. ¶ 38. The CFPB's A-9 Model Consent Form for Overdraft Services, appended to Regulation E, contains the same discretionary language used in most financial institution's overdraft terms: "We pay overdrafts at our discretion, which means we <u>do not guarantee</u> that we will always authorize and pay any type of transaction." Appx. A-9 to 12 C.F.R. § 1005.17. As the Board has argued, the "touchstone" of a credit transaction "is the 'legal obligation between the parties.'" (Compl. Ex. 1 (Board amicus brief filed in *In re Washington Mut. Overdraft Protection Litig.*, No. 04-55885 (9th Cir. June 2, 2006)), at 5.) Because discretionary overdraft services do not involve "an agreement

to extend credit through the bank's obligation to pay overdraft items," they are "exempt from the disclosure and other requirements of Regulation Z." (*Id.* at 8.)

Nor do discretionary overdraft services confer a right to "defer payment" of debt. As the CFPB recognizes, financial institutions obtain repayment of a consumer's negative overdraft balance by "immediately taking any incoming deposit to the asset account." Overdraft Lending, Very Large Financial Institutions, 89 Fed. Reg. 13,852, 13,872 (Feb. 23, 2024); *see also* Final Rule at 100, 177, 186. "[T]he right of one party to make deferred payment" has been described as the "hallmark" of "credit" under TILA. *Riethman v. Berry*, 287 F.3d 274, 277, 279 (3d Cir. 2002). Many courts have thus declined to apply TILA and other statutes with materially identical definitions of "credit" when, as in the case of discretionary overdraft services, the contract at issue does not guarantee the right to defer payment. *E.g.*, *id.* at 277, 279; *Capitol Indem. Corp. v. Aulakh*, 313 F.3d 200, 203 (4th Cir. 2002); *Shaumyan v. Sidetex Co.*, 900 F.2d 16, 18 (2d Cir. 1990).[9]

Because consumers have no right to overdraw their accounts or defer payment, discretionary overdraft services do not fall within TILA's express definition of "credit"—a reality the Board had acknowledged for decades, and that the CFPB left undisturbed for years more. *See supra* at 5–6; (Compl. ¶¶ 4, 81–89.)[10] Employing the same reasoning, at least two federal courts

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[9] Discretionary overdraft services also lack other indicia of credit. Consumers do not submit credit applications or sign standard credit agreements in order to qualify for discretionary overdraft services. (Compl. ¶¶ 41, 75.) Financial institutions typically provide this service at their discretion as a standard checking account feature without the need to verify a customer's income or assets. (*Id.*) As courts have recognized, the fees associated with these services are akin to service charges, imposed for keeping an account open when it is overdrawn, and not interest on an extension of credit. *Fawcett v. Citizens Bank, N.A.*, 919 F.3d 133, 139 (1st Cir. 2019) (overdraft fees "may compensate a bank for the service of continuing to hold open an overdrawn checking account").

[10] Other agencies and courts have likewise concluded that discretionary overdraft services do not constitute extensions of credit. The Office of the Comptroller of the Currency ("OCC"), for instance, has opined that discretionary overdraft services are not extensions of "credit" and thus the fees imposed on those services cannot be considered "interest" for purposes of the usury provision in the National Bank Act. *See* OCC, Interpretive Ltr. No. 1082, 2007 WL 5393636, at *1, *4, & n.13. (May 17, 2007)); *Walker v. BOKF, N.A.*, 30 F.4th 994, 1002–05 (10th Cir. 2022) (summarizing the relevant OCC regulations and interpretive

have dismissed the argument advanced here by the CFPB that TILA encompasses discretionary overdraft services and their accompanying fees. *See Soto v. Bank of Lancaster Cnty.*, No. 08-CV-1907, 2010 WL 1257666, at *2 (E.D. Pa. Mar. 30, 2010); *In re Washington Mut. Overdraft Protection Litig.*, 539 F. Supp. 2d 1136, 1149 (C.D. Cal. 2008).

Just as discretionary overdraft services are not credit, their fees are not "finance charges." TILA defines the term "finance charge" as "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a). As already shown, discretionary overdraft services do not involve "credit." It follows that overdraft fees are likewise not "finance charges," since they are not imposed "directly or indirectly by the creditor as an incident to the extension of credit." On a straight reading of TILA, therefore, the CFPB has exceeded the powers Congress granted it under the statute, and for that reason alone Plaintiffs have a substantial likelihood of success on the merits.

The CFPB's legal justifications for regulating discretionary overdraft services as "credit" do not hold up. The CFPB acknowledges that "[t]he TILA definition of 'credit' requires a 'right,'" but asserts it "does not require that such right be previously agreed upon." Final Rule at 58. Thus, in the CFPB's telling, a financial institution that does not guarantee payment of overdrafts in its account agreement nonetheless extends a right when it covers an overdraft gratuitously. This would be news to the Board, which stated in its 2006 amicus brief that "there is no finance charge in the absence of a written agreement." (Compl. Ex. 1 at 7.) Indeed, the very nature of a right cannot be gratuitous, as the CFPB argues, because it is, by definition, "something that is due to a

guidance). Courts, both state and federal, have employed similar reasoning. *See, e.g.*, *Walker*, 30 F.4th at 1007 (collecting authorities); *Legg v. W. Bank*, 873 N.W.2d 763, 770 (Iowa 2016).

person by . . . legal guarantee." *Right*, Black's Law Dictionary (12th ed. 2024). Absent a contractual or other right, a consumer has no "legal guarantee" that a financial institution will cover an overdraft. The CFPB's position essentially deletes the term "right" from the statute.

The CFPB's fallback argument is that a credit card issuer in its card agreement reserves the right to reject individual transactions, and yet is treated as a creditor under TILA. Final Rule at 58. But credit cards are inapt comparators to discretionary overdraft services. For one thing, credit cards occupy a special status under TILA, and Congress treated a "card issuer," i.e., "any person who issues a credit card," as a "creditor" under TILA without regard to whether "the payment of a finance charge may or may not be required." 15 U.S.C. § 1602(g), (o). A more straightforward reason why the CFPB's credit card analogy is flawed is that in instances when the credit card issuer *does* accept a charge, the customer has an express contractual right to defer payment because the credit card issuer may not demand repayment until a certain contractually-prescribed period has passed. *See Hasan v. Chase Bank USA, N.A.*, 880 F.3d 1217, 1220 (10th Cir. 2018) (noting that a credit card issuer extended "credit" under § 1602(f) when it "grant[ed] [a customer] the right to defer payment on his wine purchases"). Accordingly, with credit cards, there is the requisite right to defer payment sufficient to constitute "credit" under the plain terms of § 1602(f). With respect to discretionary overdraft services, by contrast, there is neither a right to incur a debt nor a right to defer payment; thus, those services are not "credit."

The CFPB pushes back on this conclusion as well, arguing that consumers who overdraft retain a right to defer payment of debt despite their "obligat[ion] to pay the debt within a very short timeframe." Final Rule at 58. According to the CFPB, "[w]hen a financial institution extends overdraft funds that the consumer must pay back upon their next deposit, the institution is allowing the consumer to incur a debt with the [institution] where payment of that debt is not immediate."

Id. The CFPB employs the same faulty logic here as it did above with respect to the right to incur a debt: a consumer has no right to defer repayment when the financial institution can immediately reclaim its funds from the very next deposit. Moreover, the CFPB's contention that "TILA's definition of 'credit' does not have an exclusion for short-term repayment periods," Final Rule at 58–59, is directly contrary to *Riethman*, which applied TILA to hold there was no right to defer payment when the contract at issue required "prompt payment," 287 F.3d at 277, 279.

Lacking any support in the statute's text, the CFPB resorts to revisionist history to contend that Board viewed discretionary overdraft services as meeting TILA's definition of credit when, in 1969, it decided not to regulate those services, and relied on its authority to create a "non-statutory exception[]" for discretionary overdraft services under Regulation Z. Final Rule at 6, 79. Given the express terms of the statute, this makes no sense.

Moreover, nowhere does the original proposed or final text of Regulation Z indicate that the Board was using "exception" authority to exclude discretionary overdraft fees from the definition of finance charge when "the payment of the overdraft was not previously agreed upon in writing." The Board exercised its interpretive, rather than exception, authority when it stated correctly that an overdraft fee absent a written agreement "*is not a finance charge*." Federal Reserve System, 34 Fed. Reg. 2002, 2004 (Feb. 11, 1969) (emphasis added). And the exclusion of discretionary overdraft fees is listed in Regulation Z along with other types of charges Congress expressly determined not to be finance charges, including taxes and charges in connection with real property transactions. *Compare id., with* 15 U.S.C. § 1605(d)(3), (e). Finally, when it excluded discretionary overdraft fees from the definition of "finance charge," the Board made no mention of "exception authority" and did not invoke its authority in TILA to "prescribe regulations" which "may contain . . . *exceptions* for any class of transactions." 15 U.S.C. § 1604

(1970) (emphasis added). This contrasts with another Regulation Z rulemaking from the same time period in which the Board made explicit reference to its exemption authority when exempting certain classes of transactions. *See* Truth in Lending, 33 Fed. Reg. 15,506, 15,516 (Oct. 8, 1968). Regulation Z's drafting history and the Board's contemporaneous statements likewise contradict the CFPB's historical narrative. *See* (Compl. ¶¶ 81–89.)

The subsequent history of Regulation Z further undermines the CFPB's historical narrative. The Complaint highlights several statements and decisions by the Board between 1969 and 2009 demonstrating that it viewed discretionary overdraft services as falling outside TILA's definition of "credit" and thus outside its regulatory jurisdiction. (*Id.* ¶¶ 50–52, 80–89.) The Board spoke at length about this regulatory history in a 2006 amicus brief, in which it contended that limiting regulation to overdraft products governed by a "written agreement" was appropriate because only in those cases was there an extension of "credit" as defined in TILA. (Compl. Ex. 1 at 7–8.) In the Board's words, "[t]he requirement that there be a written agreement is not met simply because there is a deposit account agreement that addresses overdrafts. . . . Rather, there must be an agreement to extend credit through the bank's obligation to pay overdraft items." (*Id.*)

In its recitation of the regulatory history in the Final Rule, the CFPB noticeably fails to mention the Board's 2006 amicus brief (or the Board's numerous other similar statements, issued as recently as 2009, *see* (Compl. ¶¶ 80–89) that were brought to its attention by commenters), and instead selectively quotes stray statements from the Board that predate the 2006 amicus brief. *See* Final Rule at 79–80. But even these stray references do not support the CFPB's revisionist history. For example, the CFPB discusses the Board's "revisit[ing] of the "exception of bounce protection programs from Regulation Z in 1981," and quotes the Board's statement that "a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a

charge imposed for a credit extension and thus fits the general definition of a finance charge, whether or not the charge and the honoring of the check are reflected in a written agreement." *Id.* (quoting 45 Fed. Reg. 80,648, 80,657 (Dec. 5, 1980)). But the Board elected not to regulate discretionary overdraft services in this rulemaking, and stated that "the characterization of the charge will thus depend on whether 'credit' has been extended." 45 Fed. Reg. at 80,657. What the CFPB now calls "clos[ing] the large bank regulatory loophole," then, is in fact a radical reinterpretation of TILA that conflicts with the Board's longstanding view, reiterated many times, that discretionary overdraft services lack a credit feature. (Compl. ¶ 139.)

B. The CFPB Exceeds its Statutory Authority by Using a Disclosure Statute to Impose Substantive Restrictions on Discretionary Overdraft Services.

Even if the CFPB had authority to regulate discretionary overdraft services under TILA, it exceeded that authority by regulating the extension of credit (e.g., imposing a fee cap) rather than just requiring additional or enhanced disclosures. Under TILA, the agency's rulemaking authority extends no further than what is "necessary or proper to effectuate the purposes of this subchapter." 15 U.S.C. § 1604(a). The purpose of TILA is "to assure a meaningful *disclosure* of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." *Id.* § 1601(a) (emphasis added). Congress recognized that TILA would "not in any way regulate the credit industry" or seek "to impede or retard the growth of consumer credits." S. Rep. No. 90-392 at 1–2 (1967); *see also* H.R. Rep. No. 90-1040 at 7 (1967) ("[TILA] provides for full disclosure of credit charges, rather than regulation of the terms and conditions under which credit may be extended."). Not surprisingly, then, "courts have

consistently read TILA as a disclosure statute—not a statute that allows the bureau to substantively regulate credit." *PayPal, Inc.*, 512 F. Supp. 3d at 11 (collecting cases).[11]

The Final Rule goes well beyond disclosure of credit terms. *See* (Compl. ¶¶ 67–68.) Most obviously, it caps the amount VLFIs may charge to continue offering discretionary overdraft services on the same terms. Nothing in TILA's language or purpose permits this. Congress, in fact, has prohibited the CFPB from imposing a usury limit based on the credit's interest rate, 12 U.S.C. § 5517(o), which the cap effectively violates.[12] (Compl. ¶ 116.) As the Board has long recognized, "TILA is principally a cost disclosure statute"; thus, "it does not mandate federal 'price controls' with respect to credit" and "does not substitute as a federal usury statute." Board amicus brief filed in *Aronson v. Peoples Nat. Gas Co.* (3d Cir. 1999), 1999 WL 33631856, at *12.[13] Yet that is exactly what the CFPB does here.

Moreover, for discretionary overdraft services priced above the fee cap, the Final Rule requires creating a separate account that contains the customer's overdraft balance. As authority for imposing this substantive requirement, the CFPB expressly relies on its general rulemaking authority in TILA, arguing that "requiring the separation of a consumer's asset balance" "is necessary or proper to facilitate creditor compliance and to effectuate the purposes of TILA by helping to avoid the uninformed use of credit and protecting consumers against inaccurate and

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[11] *See also, e.g.*, *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 198 (2011) ("Congress passed TILA to promote consumers' 'informed use of credit' by requiring 'meaningful disclosure of credit terms'"); *Hauk*, 552 F.3d at 1120 ("TILA is only a 'disclosure statute' and 'does not substantively regulate consumer credit'"); *In re Capital One Bank Credit Card Interest Rate Litig.*, 51 F. Supp. 3d at 1348 (same).

[12] 12 U.S.C. § 5517(o) provides: "No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law."

[13] *Accord King v. Police & Fire Fed. Credit Union*, 2019 WL 2226049, at *14 (E.D. Pa. May 22, 2019) ("What TILA does not do is 'tell banks how much interest they may charge or whether they must grant a consumer loan.'" (quoting Office of the Comptroller of the Currency fact sheet)).

unfair . . . practices." Final Rule at 136. The CFPB's rationale fails the basic administrative-law maxim that an agency may not "attempt[] to do indirectly what it could not do directly." *Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239, 1248 (D.C. Cir. 1996); *accord NRDC v. EPA*, 489 F.3d 1364, 1371 (D.C. Cir. 2007). Regardless of whether the separate-account requirement furthers TILA's disclosure purpose, it is an improper substantive limitation on credit that the CFPB lacks authority to impose under its TILA rulemaking power.

The court in *PayPal, Inc.* employed similar reasoning to invalidate part of the CFPB's "prepaid rule," a rule the CFPB likewise argued it had authority to issue under TILA. 512 F. Supp. 3d at 10. As relevant here, the prepaid rule included a credit-linking restriction requiring a 30-day delay before a consumer could link prepaid products to credit accounts in certain "digital wallets." *Id.* at 4–5. The court held that the CFPB lacked authority to issue such a substantive rule under TILA, a statute the court characterized as "a disclosure statute—not a statute that allows the bureau to substantively regulate credit." *Id.* at 11. In *PayPal*'s words, "Congress has spoken specifically on the means the Bureau can effectuate TILA: the *disclosure of credit terms*, [a]nd the means chosen by Congress to effectuate legislation matter." *Id.* at 10.[14]

Here, as in *PayPal*, the CFPB has disregarded the "means the Bureau can effectuate TILA" by promulgating the Final Rule that imposes several substantive restrictions on services the CFPB characterizes as credit. Congress' grant of authority to the Bureau to make rules "'necessary or proper' does not provide the Bureau with unfettered discretion." *Id.* Thus, the requirements the Bureau imposes in furtherance of TILA's purpose "must still be within the confines of the means authorized by Congress." *Id.*

[14] The CFPB did not appeal the *PayPal* court's decision that it lacked the authority to impose substantive restrictions on prepaid accounts even while appealing other aspects of that decision.

The Final Rule imposes even more substantive restrictions if a VLFI permits customers to use a debit card or an account number to incur overdrafts. In those cases, the CFPB classifies the debit card as a "hybrid debit-credit card" subject to Regulation Z's rules governing credit cards. The CFPB purports to rely on its general grant of authority in the CARD Act for these substantive restrictions. Final Rule at 32. But the CARD Act was enacted "to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan." Pub. L. No. 111–24, 123 Stat. 1734 (2009). As discussed, discretionary overdraft services are not credit, and thus cannot be regulated as such under the CARD Act. The Final Rule's CARD-Act-derived changes are all predicated on the reclassification of these services as extensions of "credit" under TILA, and thus do not provide an independent basis upon which to uphold the Final Rule's substantive limits. (Compl. ¶¶ 69, 107.)

Even assuming the CARD Act applied with full effect to the provision of discretionary overdraft services, it does not confer the authority to create fee caps for those services. Under the CARD Act, the CFPB may regulate "penalty fees" and "rate increases," *see* 15 U.S.C. § 1665d (penalty fees); *id.* § 1666i-1 (rate increases), but overdraft fees are neither of these things, and the Final Rule does not claim otherwise. Far from imposing a penalty, discretionary overdraft services are optional, and provided in exchange for the benefits of avoiding a declined transaction.

C. The Final Rule is Barred by the Major Questions Doctrine.

The "major questions" doctrine further erodes the CFPB's claim of authority under TILA. Under that doctrine, Congress must "speak clearly when authorizing an agency to exercise powers of vast economic and political significance," *NFIB v. OSHA*, 595 U.S. 109, 117 (2022), and "must point to clear congressional authorization for the power it claims," *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). As set forth below, the Final Rule has outsized economic and political effects. Yet the CFPB points to no clear congressional authorization for the Final Rule. TILA makes no

mention of overdraft services, and, as discussed, discretionary overdraft services do not fit within TILA's definitions of "credit" and "finance charge." And TILA expressly prohibits the kind of substantive regulations the Final Rule imposes. The CFPB's radical departure from past practice is more evidence of its lack of statutory authorization: "A longstanding want of assertion of power by those who presumably would be alert to exercise it may provide some clue that the power was never conferred." *Biden v. Nebraska*, 143 S. Ct. 2355, 2383 (2023) (invalidating agency rule under the major questions doctrine).

The significant economic effects of the Rule cannot be denied. Consumers paid more than $6 billion in overdraft fees to VLFIs in 2022 alone, Final Rule at 215, and the amount VLFIs paid into overdraft during that year is likely substantially higher. *See* Compl. ¶ 128 (citing data showing that the median size of items paid into overdraft far exceeded the cost of the overdraft fee). The Rule directly impacts hundreds of millions of depositors at VLFIs that offer discretionary overdraft services above the CFPB's fee cap, and affects the price of overdraft services across the industry, including at smaller financial institutions. (*Id.* ¶ 98.) The Final Rule is also a major component of the CFPB's highly politicized and publicized campaign against so-called "junk fees," *id.*, and thus resembles the kinds of politically charged rules the Supreme Court has recently scrutinized under the "major questions" doctrine, *see, e.g.*, *Ala. Ass'n of Relators v. HHS*, 594 U.S. 758, 764 (2021) (CDC eviction moratorium); *NFIB v. DOL*, 595 U.S. 109, 117 (2022) (vaccine mandate).

II. THERE IS A SUBSTANTIAL THREAT OF IRREPARABLE INJURY

Because the APA waives sovereign immunity only for "relief other than money damages," 5 U.S.C. § 702, "complying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs," *Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022). "When determining whether injury is irreparable, it is not so much the magnitude but the irreparability that counts." *Ryan LLC*, 2024 WL 3297524, at *12 (quoting *Texas v. EPA*,

829 F.3d 405, 433–34 (5th Cir. 2016)); *see Career Colls. & Schs. of Tex.*, 98 F.4th at 236 ("Alleged compliance costs need only be more than de minimis."); *Louisiana*, 55 F.4th at 1035 (same).

As observed in *Federation of Americans for Consumer Choice, Inc.*, "increased costs of compliance and necessary alterations in operating procedures . . . are the kinds of irreparable injury that support a preliminary injunction or stay—in part because they are not easily restored." 2024 WL 3554879, at *16; *accord Airlines for Am. v. Dep't of Transp.*, 110 F.4th 672, 677 (5th Cir. 2024) (injury was irreparable where petitioners needed to "reengineer[] their websites to comply with the Rule"); *Career Colls. & Schs. of Texas*, 98 F.4th at 235–37 (in addition to unrecoverable monetary costs, irreparable injury was demonstrated through expanded recordkeeping requirements and staff training, altered business operations, and missed business opportunities).

Plaintiffs amply satisfy this standard. The CFPB acknowledges the implementation costs associated with the Final Rule, *see* Final Rule at 188, 230, and Plaintiffs' declarations establish the nonrecoverable costs and changes in operating procedures that the Final Rule will entail. In a survey conducted by the Consumer Bankers Association, eight out of twelve banks that responded to a question on estimated costs indicated that they would incur implementation costs in excess of $100,000 over the next six months in order to prepare for the Final Rule. Ex. 1 (Decl. of Consumer Bankers Association) ¶ 17. Three of those eight banks estimated implementation costs in excess of $500,000 in the first six months, with four banks estimating total implementation costs in excess of $1 million. *Id.* As shown below, VLFIs would incur these costs whether or not they price discretionary overdraft services above or below the fee cap or their "breakeven" cost.

A. Discretionary Overdraft Fees at the Price Cap or "Breakeven" Cost

A VLFI that opts to continue offering discretionary overdraft services at its "breakeven" costs must undertake a detailed analysis of what that cost is under the CFPB's criteria. As the CFPB notes, this involves aggregating and documenting the VLFI's "total direct costs and charge-

off losses for providing [discretionary overdraft services] to all accounts open at any point during the previous 12 months." Final Rule at 121. A VLFI's "process of calculating its 'breakeven' cost would be both costly and time-consuming." Ex. 2 (Decl. of Anonymous Bank A) ¶ 13; *see also, e.g.*, Ex. 1 ¶ 14; Ex. 3 (Decl. of Mississippi Bankers Association) ¶ 15. This includes hiring vendors and consultants to undertake a complex process of data extraction and analysis estimated to last for months at a cost of approximately $600,000. Ex. 2 ¶ 13.

Even if a VLFI prices its discretionary overdraft service at the $5 fee cap, it must still "incur significant costs analyzing the impact of the price cap on its discretionary overdraft service and deposit account services," and "will likely have to overhaul its account offerings and business strategy." Ex. 4 (Decl. of Arvest Bank) ¶ 9; *accord* Ex. 5 (Decl. of American Bankers Association) ¶ 14; Ex. 2 ¶ 14. As part of this overhaul, some VLFIs would have to "chang[e] the types of accounts [they] offer[] and restrict[] the terms under which discretionary overdraft services are offered to [their] customers." Ex. 4 ¶ 11; Ex. 2 ¶ 14 (noting changes to overdraft access, overdraft limits, and other aspects of the discretionary overdraft service offered, such as daily limits and *de minimis* thresholds).

All of these changes, in turn, "require upfront analysis by business, compliance, and legal personnel, and then considerable implementation work on the back-end, such as collaborating with third-party vendors, making system changes and testing in [the VLFI's] core operating system, . . . revising marketing materials, training retail employees in the branch and call-centers, and conducting additional compliance management and audit reviews." Ex. 4 ¶ 12; *accord* Ex. 5 ¶ 14; Ex. 2 ¶ 22. VLFIs would also incur costs related to "revising policies and procedures, updating account agreements, issuing new overdraft fee disclosures to existing customers (including the CFPB's model A-9)." Ex. 4 ¶ 12; *accord* Ex. 2 ¶¶ 15, 19. All told, Anonymous Bank A estimates

that the cost of implementing changes to its overdraft program and/or deposit account offerings in response to the Final Rule's fee cap or "breakeven" cost limit would be approximately $2 million.

B. Discretionary Overdraft Fees Above the Price Cap or "Breakeven" Cost

VLFIs that decide to offer discretionary overdraft services above their "breakeven" cost or the fee cap must design a separate overdraft "credit" account governed by Regulation Z and comply with a variety of Regulation Z requirements. *See* Ex. 2 ¶¶ 24–32. "This involves reprogramming the bank's deposit systems to route overdraft 'credit' into a separate account." Ex. 5 ¶ 12; *accord* Ex. 2 ¶ 28; Ex. 6 (Decl. of Anonymous Credit Union B) ¶ 12. Anonymous Credit Union B describes the difficulty of bringing discretionary overdraft services into compliance with Regulation Z, which involves reconfiguring "its lending and core deposit operating systems—two completely different systems." Ex. 6 ¶ 11. Additional modifications to account operating systems would also be necessary to comply with a host of other Regulation Z requirements relating to fees, payment due dates, periodic statements, applications, solicitations, and the provision of dispute rights. Ex. 2 ¶¶ 29–31; Ex. 6 ¶¶ 15–16. For overdraft credit services accessible by a debit card, moreover, VLFIs "would have to establish a framework, supported by the necessary infrastructure, to conduct ability-to-pay determinations on deposit accounts with overdraft features." Ex. 6 ¶ 13. VLFIs will also incur costs disseminating Regulation Z disclosures. Ex. 2 ¶ 27. Finally, VLFIs will have to analyze and revise their discretionary overdraft services to ensure they conform with the requirements of other statutes, including the Military Lending Act and Federal Credit Union Act. Ex. 2 ¶ 33; Ex. 7 (Decl. of America's Credit Unions) ¶ 14.

Conservatively, the total estimated costs of implementing the Final Rule's substantive regulatory regime is in the millions. Anonymous Bank A estimates its cost of instituting "overdraft credit" at $2 million. Ex. 2 ¶ 35, and Anonymous Credit Union B puts its estimate at $1.5 million. Ex. 6 ¶ 20.

Financial institutions must begin preparing to comply immediately; thus, they will incur substantial costs that will be unrecoverable even if the Final Rule is struck down. There can be no doubt, therefore, that even if Plaintiffs ultimately prevail in this lawsuit, their members will suffer irreparable harm in the form of nonrecoverable compliance costs absent a preliminary injunction. Such expenses comfortably satisfy the Fifth Circuit's test for irreparable harm. *See Restaurant Law Ctr. v. U.S. Dep't of Labor*, 66 F.4th 593, 600 (5th Cir. 2023).

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST FAVORS AN INJUNCTION

"Federal courts have considered the balance of equities and public interest factors together as they overlap considerably." *Texas v. United States*, 524 F. Supp. 3d 598, 663 (S.D. Tex. 2021) (citing cases). The "public interest is in having governmental agencies abide by the federal laws that govern their existence and operations." *Wages & White Lion Invests, LLC*, 16 F.4th at 1143 (quoting *Texas v. Biden*, 10 F.4th 538, 559 (5th Cir. 2021)). "And there is generally no public interest in the perpetuation of unlawful agency action." *Id*. at 1143.

As for the CFPB, it will not be harmed by a delay in the effective date of its regulation. The current rules have worked well, and for the benefit of consumers, for 55 years. *See Oklahoma v. Cardona*, --- F. Supp. 3d ----, 2024 WL 3609109, at *12 (W.D. Okla. July 31, 2024) ("Since the current regulations have been in effect for decades, there is little harm in maintaining the status quo through the pendency of this suit.").

CONCLUSION

For the foregoing reasons, the requirements in this Circuit for a preliminary injunction, and delay of the effective date of the Final Rule, have been met. Plaintiffs respectfully request, therefore, that the Court issue a preliminary injunction enjoining the Final Rule in its entirety, and extending the compliance deadline day-for-day with the injunction.

Respectfully submitted, this the 18th day of December 2024.

PLAINTIFFS MISSISSIPPI BANKERS ASSOCIATION, CONSUMER BANKERS ASSOCIATION, AMERICAN BANKERS ASSOCIATION, AMERICA'S CREDIT UNIONS, ARVEST BANK, BANK OF FRANKLIN, AND THE COMMERCIAL BANK

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CERTIFICATE OF SERVICE

I, E. Barney Robinson III (MSB #09432), an attorney for Plaintiffs, do hereby certify that on December 18, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification to all counsel of record.

s/ *E. Barney Robinson III* (MB # 09432)
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