

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

TEXAS BANKERS ASSOCIATION
203 W. 10th St.
Austin, TX 78701

AMARILLO CHAMBER OF
COMMERCE
1000 S. Polk St.
Amarillo, TX 79101

AMERICAN BANKERS
ASSOCIATION
1333 New Hampshire Ave. NW,
Washington, DC 20036

CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA
1615 H Street, N.W.
Washington, DC 20062

LONGVIEW CHAMBER OF
COMMERCE
410 N. Center St.
Longview, TX 75601

INDEPENDENT COMMUNITY
BANKERS OF AMERICA
1615 L St NW, Ste. 900
Washington, DC 20036

Civil Case No.: 2:24-cv-00025

INDEPENDENT BANKERS
ASSOCIATION OF TEXAS
1700 Rio Grande St, Ste. 100
Austin, TX 78701

Plaintiffs,

v.

OFFICE OF THE COMPTROLLER
OF THE CURRENCY and MICHAEL
J. HSU in his official capacity as
Acting Comptroller of the Currency,
400 7th St. SW
Washington, DC 20219

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM and
JEROME POWELL in his official
capacity as Chairman of the Board of
Governors
Constitution Ave NW & 20th St. NW
Washington, DC 20551

FEDERAL DEPOSIT INSURANCE
CORPORATION and MARTIN
GRUENBERG in his official capacity
as Chairman of the FDIC
550 17th St NW
Washington, DC 20429

Defendants.

**PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1331, and the Administrative Procedure Act, 5 U.S.C. § 705, the Texas Bankers Association, Amarillo Chamber of Commerce, the American Bankers Association, the Chamber of Commerce of the United States of America, the Longview Chamber of Commerce, the Independent Community Bankers of America, and the Independent Bankers Association of Texas (“Plaintiffs”) respectfully move the Court to preliminarily enjoin recently promulgated regulations issued pursuant to the Community Reinvestment Act of 1977 (“CRA”), 12 U.S.C. § 2901 *et. seq.* (hereinafter the “Final Rules”).

The Final Rules were issued jointly by the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Federal Deposit Insurance Corporation (“FDIC”), and the Office of the Comptroller of the Currency (“OCC”) (collectively “the Agencies”) and published in the Federal Register on February 1, 2024.

As described in the attached Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction, Plaintiffs satisfy the Fifth Circuit’s test for preliminary injunctive relief. *See Louisiana v. Biden*, 55 F.4th 1017, 1022 (5th Cir. 2022).

First, Plaintiffs have a substantial likelihood of success on the merits. In promulgating the Final Rules, the Agencies exceeded their statutory authority in two ways. First, the Agencies seek to assess some banks outside of the areas in which they have a physical presence and receive deposits, in conflict with the geographic limits that Congress included in the CRA. Second, the Agencies seeks to assess some banks on their deposit products, in conflict with Congress's instruction to assess banks on their response to the credit needs of their communities. Each contravenes the plain text of the CRA, and each is a sufficient basis to establish Plaintiffs' likelihood of success on the merits.

Second, there is a substantial threat that, absent an injunction, Plaintiffs will be irreparably harmed. Banks must take immediate steps to prepare to comply with the Final Rules, which are exceedingly complicated and impose new and onerous data collection, validation, and reporting requirements for broad assessment areas throughout the country. Even the Agencies concede that banks will spend hundreds of thousands of hours and over \$90 million to comply with the Final Rules within the first twelve months. *See* 89 Fed. Reg. 7106. And none of these implementation costs will be recoverable if the Court determines that the Agencies have exceeded their statutory authority.

Finally, the balance of harms and the public interest (factors which merge when the government is a party) favor Plaintiffs. *See Louisiana v. Biden*, 55 F.4th

1017, 1022 (5th Cir. 2022); *Vanderstok v. BlackHawk Manufacturing Group, Inc.*, 639 F. Supp. 3d 722, 727 (N.D. Tex. 2023). The balance of the harms favors Plaintiffs because the vast majority of banks have achieved either “Satisfactory” or “Outstanding” ratings on their most recent CRA evaluations and there is no evidence that a few months’ delay will materially impact the communities that Congress sought to protect in the CRA. Further, “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022). The public interest is particularly strong where, as here, the Agencies have overstepped their statutory authority.

For the reasons set forth above and in the attached memorandum of law, Plaintiffs request that the Court issue a preliminary injunction preserving the *status quo* until it renders a decision on the merits.

DATED: February 9, 2024

Respectfully submitted,

/s/Thomas C. Riney

UNDERWOOD LAW FIRM, P.C.

Thomas C. Riney (Texas Bar No. 16935100)

Slater Elza (Texas Bar No. 2400747)

PO Box 9158

Amarillo, Texas 79105

(806) 376-5613

(806) 349-9474

tom.riney@uwlaw.com

slater.elza@uwlaw.com

WILLIAMS & CONNOLLY LLP
Ryan Scarborough (*pro hac vice*
forthcoming)
Jesse Smallwood (*pro hac vice* forthcoming)
William R. Murray, Jr. (*pro hac vice*
forthcoming)
Richard A. Olderman (*pro hac vice*
forthcoming)
Alex Gaudio (*pro hac vice* forthcoming)
Armani Madison (*pro hac vice* forthcoming)
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
rscarborough@wc.com
jsmallwood@wc.com
bmurray@wc.com
rolderman@wc.com
agaudio@wc.com
amadison@wc.com

Attorneys for Plaintiffs

AMERICAN BANKERS ASSOCIATION
Thomas Pinder (*pro hac vice* forthcoming)
Andrew Doersam (*pro hac vice*
forthcoming)
1333 New Hampshire Ave. NW
Washington, DC 20036
tpinder@aba.com
adoersam@aba.com

*Attorneys for Plaintiff American Bankers
Association*

U.S. CHAMBER LITIGATION CENTER

Jennifer B. Dickey (*pro hac vice*
forthcoming)

Maria C. Monaghan (*pro hac vice*
forthcoming)

1615 H Street NW

Washington, DC 20062

jdickey@USChamber.com

mmonaghan@USChamber.com

*Attorneys for Plaintiff Chamber of
Commerce of the United States of America*

CERTIFICATE OF CONFERENCE

All parties have conferred as to their positions related to Plaintiffs' Motion for Preliminary Injunction. Defendants are unable to agree to the relief sought by Plaintiffs. Counsel for Plaintiffs and the Federal Reserve System conferred by video conference on Tuesday, February 6, 2024 regarding the issues and relief sought. Counsel for all parties conferred by video conference on February 9, 2024 to discuss the issues and relief sought. Although there was no agreement on Plaintiffs' motion and the relief sought, Defendants did request 28 days to respond to the Motion for Preliminary Injunction, which Plaintiffs do not oppose.

/s/ Thomas C. Riney

/s/ Slater C. Elza

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, thereby serving this document on all attorneys of record in this case. Pursuant to Local Rule 5.1, I further certify that the foregoing document is available for viewing and downloading on ECF.

/s/Thomas C. Riney

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Defendants.

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Before the Court is Plaintiffs' Motion for a Preliminary Injunction. The Court, having considered the pleadings on file, the evidence and the argument of counsel, is of the opinion that Plaintiffs' Motion should be GRANTED.

Plaintiffs have shown a likelihood of success on the merits of their claims that regulations recently promulgated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the "Agencies") pursuant to the Community Reinvestment Act of 1977 ("CRA"), 12 U.S.C. § 2901 *et. seq.*, 12 C.F.R. §§ 25.12, 228.12, 345.12, 89 Fed. Reg. 6574 (Feb. 1, 2024) (to be codified at 12 C.F.R. §§ 25, 228, and 345) (hereinafter the "Final Rules") exceed the Agencies' authority under the CRA for at least two reasons. The CRA instructs the Agencies, when examining a financial institution, to "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution." 12 U.S.C. § 2903. And other statutory provisions make clear that community is used in its ordinary sense as referring to the geographic subunit, like a town or county, in which the bank has deposit-taking facilities like branches or

ATMs. *See, e.g.*, 12 U.S.C. § 2901(b), 2902(4), 2906(b)(1)(B). Despite the clarity of the language in the statute, the Final Rules provide for the Agencies to assess some banks on their record of meeting the credit needs of borrowers *outside* of their communities in the newly created “Retail Lending Assessment Areas” and “Outside Retail Lending Areas.” *See, e.g.*, §§ ___.17, ___.18, ___.22, 89 Fed. Reg. 6574, 7114-15, 7117-20. Second, the Final Rules provide for the Agencies to assess some banks on their record of meeting the *deposit* needs of low- and moderate- income borrowers. *See, e.g.*, § ___.23(b)(i)(B)(4), (c)(3).

Plaintiffs also have shown that the remaining factors for a preliminary injunction weigh in Plaintiffs’ favor. Plaintiffs’ declarations establish that members will suffer irreparable harm in the absence of a preliminary injunction from the extensive costs of complying with the Final Rules, which even the Comptroller estimated would amount to more than \$91.8 million in the first 12 months. *See* 89 Fed. Reg. at 7106. And finally, the balance of the equities and public interest weigh in favor of preserving the status quo while Plaintiffs litigate their claims that the Final Rules exceed the Agencies statutory authority.

Plaintiffs are therefore entitled to a preliminary injunction. *See Louisiana v. Biden*, 55 F.4th 1017, 1022 (5th Cir. 2022).

It is therefore ORDERED that Plaintiffs’ Motion for a Preliminary Injunction is GRANTED. The Court ORDERS that the Final Rules published at

89 Fed. Reg. 6574 (Feb. 1, 2024) (to be codified at 12 C.F.R. §§ 25, 228, and 345) be ENJOINED pending the resolution of this lawsuit. The Court further ORDERS that the effective date of April 1, 2024, and all implementation dates be extended day for day for each day the injunction remains in place.

Amarillo, Texas, this ___ day of _____ 2024, at _____.

U.S. DISTRICT COURT JUDGE