

Banking and Finance Law Daily Wrap Up, COMMUNITY DEVELOPMENT— N.D. Tex.: Court enjoins banking agencies from enforcing newly adopted CRA rule, (Apr. 1, 2024)

Banking and Finance Law Daily Wrap Up

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By [Charles A. Menke, J.D.](#)

The court found the plaintiffs easily established a substantial likelihood of success on the merits and a threat of irreparable injury.

A federal district court for the Northern District of Texas has entered an order preliminarily enjoining the Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation from enforcing a final rule adopted by the agencies in October 2023 implementing the Community Reinvestment Act (2023 CRA Final Rule). The American Bankers Association, U.S. Chamber of Commerce, Independent Community Bankers of America, and four Texas-based associations jointly sued the agencies in February seeking Administrative Procedure Act (APA) review of the 2023 CRA Final Rule (see [Banking and Finance Law Daily](#), Feb 6, 2024). The court determined the plaintiffs had associational standing, demonstrated a substantial likelihood of success on the merits, demonstrated a substantial threat of irreparable injury, and demonstrated that the balance of equities and the public interest supported injunctive relief ([Texas Bankers Association v. Office of Comptroller of the Currency](#), March 29, 2024, Kacsmaryk, M.).

2023 CRA Final Rule. In October 2023, the agencies adopted the 2023 CRA Final Rule to strengthen and modernize regulations implementing the CRA (see [Banking and Finance Law Daily](#), Oct. 25, 2023). At the time, the agencies said the 2023 CRA Final Rule would, among other things: encourage banks to expand services in low- and moderate-income communities; adapt to industry changes, including internet and mobile banking; provide greater clarity and consistency; and tailor CRA evaluations and data collection to bank size and type. The rule was to take effect April 1, 2024.

Associational standing. The court rejected the agencies' arguments that plaintiffs lacked standing because they failed to identify by name at least one member with standing in their own right and did not assert that the challenged activity affected all members of their associations. According to the court, the U.S. Supreme Court and Fifth Circuit precedent cited by the agencies did not support an "identify-by-name" requirement. The court also determined that all members of the associations need not be affected by the challenged activity as "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement."

Substantial likelihood of success. In determining that the plaintiffs established a substantial likelihood of success on the merits, the court focused on whether a bank's community is defined in relation to the bank's physical location or where a bank serves its customers. Plaintiffs argued the 2023 CRA Final Rule violated the CRA's instruction to assess banks based only on their performances within their communities. The agencies asserted that because the CRA employs the phrase "entire community" an expansive view was warranted when assessing a bank's CRA performance.

"That the word 'community' necessarily involves a limited geographic area is indisputable," the court said. Moreover, as a matter of statutory interpretation, the focus of the CRA is "on geographic areas surrounding a bank's *physical* facilities." Rejecting the agencies' heavy reliance on "the word 'entire' in the phrase 'entire community,'" the court countered that "[i]f a statutory 'community' is created around every individual customer with whom a bank does business—regardless of whether that customer is within the geography of the bank's physical presence—the term becomes meaningless and the statute ineffectual." Finding the text of the CRA unambiguous, the court "decline[d] to introduce ambiguity through the use of legislative history."

The court further determined that the CRA did not authorize the agencies to assess deposit products. Again, as a matter of statutory interpretation, the court found that in enacting the CRA, Congress considered deposit services “yet in every operative provision, Congress specified that only credit need be considered.”

The court lastly applied the Major Questions Doctrine in favor of the plaintiffs. Under the Major Questions Doctrine, “courts expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.” According to the court, the authority asserted by the agencies with respect to the 2023 CRA Final Rule was substantial. In applying the doctrine in plaintiffs’ favor, the court specifically emphasized that Congress could have passed legislation altering or expanding the CRA, but did not. “[T]he Community Reinvestment Modernization Act—introduced four times in nine years—‘would have shifted assessment areas from those areas surrounding deposit-taking facilities to areas where banks make loans.’ ... It never passed,” the court noted.

Irreparable injury, balance of equities. In finding that the plaintiffs satisfied the remaining legal requirements for a preliminary injunction, the court determined that plaintiffs “have pled sufficiently clear harms that will be—and are currently being—incurred.” The court noted “the Fifth Circuit has long held that “‘complying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs.’” While acknowledging that “compliance costs must be ‘more than *de minimis*’ ... the ‘key inquiry’ here is ‘not so much the magnitude but the irreparability,’” the court said. Based on the allegations contained in plaintiffs’ pleadings, the plaintiffs’ compliance costs “fall into the standard ‘nonrecoverable costs’ category recognized repeatedly by the Fifth Circuit,” the court said.

Further relying on Fifth Circuit precedent, the court said “there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations.’” The court determined that the agencies “handful of pled benefits [of the 2023 CRA Final Rule] do not override Plaintiffs’ strong warrant for a preliminary injunction.” The court also found that the agencies failed to persuasively support their claim that the 2023 CRA Final Rule would provide significant regulatory relief and lower costs.

Injunction order. The court enjoined the agencies from enforcing the 2023 CRA Final Rule published at 89 Fed. Reg. 6574 (Feb. 1, 2024) (to be codified at 12 C.F.R. Sections 25, 228, and 345) against the plaintiffs pending the resolution of the lawsuit. Under the court’s order, the 2023 CRA Final Rule’s effective date of April 1, 2024, along with all other implementation dates, are extended, day for day, for each day the injunction remains in place.

The case is [No. 2:24-CV-025-Z-BR](#).

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Companies: Amarillo Chamber of Commerce; American Bankers Association; Chamber of Commerce of the United States of America; Independent Bankers Association of Texas; Independent Community Bankers of America; Longview Chamber of Commerce; Texas Bankers Association

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