IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ACA INTERNATIONAL and SPECIALIZED COLLECTION SYSTEMS, INC. *Plaintiffs*, v. CONSUMER FINANCIAL PROTECTION BUREAU and the Acting Director of the Consumer Financial Protection Bureau, 1700 G. St. NW, Washington, DC 20552 *Defendants.*	No. 4:25-CV-00094

PROPOSED DEFENDANT-INTERVENOR'
REPLY IN SUPPORT OF MOTION TO INTERVENE [ECF NO. 23]

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NATURE AND STAGE OF PROCEEDING

This case involves Plaintiffs' challenge to a rule that a federal agency lawfully and appropriately promulgated after extensive research, notice, and comment, including consideration of input by Plaintiffs: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) ("Medical Debt Rule" or "Rule"), 90 Fed. Reg. 3,276 (Jan. 14, 2025) (to be codified at 12 C.F.R. pt. 1022). Plaintiffs, a debt collection trade association and a debt collector, previously filed a complaint and motion for preliminary injunction. ECF No. 14. Subsequently, after the Defendants, the Consumer Financial Protection Bureau and its Acting Director (collectively, the CFPB), requested a delay in the effective date of the Rule in another proceeding, David Deeds, Harvey Coleman, Tzedek DC, and New Mexico Center on Law and Poverty (collectively, Proposed Intervenors), moved to intervene in this action under Federal Rule of Civil Procedure 24 to defend the Rule. ECF No. 23. Immediately thereafter, the CFPB sought a ninety-day stay of the litigation, ECF No. 24, which the Court granted, ECF No. 28. Notwithstanding the stay, Plaintiffs filed an opposition to Proposed Intervenors' motion, ECF No. 33, to which Proposed Intervenors now respond.

STATEMENT OF RELEVANT FACTS

Following a rulemaking and notice and comment process pursuant to the Administrative Procedures Act (APA), the CFPB promulgated a Rule that, when implemented, will limit reporting of medical debt on consumers' credit reports, pursuant to the CFPB's authority under the Fair Credit Reporting Act.[1] If the Rule is permitted to go into effect, it will benefit millions of

[1] While not relevant here, Plaintiffs' filings contain several misstatements about the impact and background of the Rule, including their statement in their response brief that the Rule "will conceal up to 57% of all information regarding unpaid accounts currently reported on consumer credit reports." ECF No. 33 at 1. This statistic predated the voluntary changes by the nationwide consumer reporting agencies that removed all paid medical debts and medical debts under $500

consumers like David Deeds and Harvey Coleman, whose credit profiles are negatively impacted by reports of medical debt. It will also benefit organizations that directly serve and advocate on behalf of consumers, like Tzedek DC and New Mexico Center on Law and Poverty (NMCLP).

As set forth in detail in Proposed Intervenors' opening brief and attached declarations, Proposed Intervenors have a direct and meaningful interest in the outcome of this litigation. ECF No. 23-1 at 3–4, 9–24; ECF Nos. 23-4 to -7. David Deeds and Harvey Coleman are the direct intended beneficiaries of the Rule, as they stand to have their credit profiles improved by removal of medical debt from their credit reports, providing them peace of mind and easier access to credit, housing, transportation, employment, and more. *See* ECF No. 23-4 ¶¶ 13–16; ECF No. 23-5 ¶¶ 8–11. Tzedek DC and NMCLP also stand to benefit from the Rule, as they devote their resources to assisting individuals with removing medical debt from their credit reports and otherwise addressing the impacts of medical debt credit reporting; they further engage in education and advocacy to address the very issues that the Rule seeks to resolve. *See* ECF Nos. 23-6, 23-7.

As soon as the Rule was promulgated, it was challenged both in this case and in a separate proceeding, *Cornerstone Credit Union League, et al. v. CFPB*, 4:25-cv-16 (E.D. Tex.), both in federal courts in Texas. In *Cornerstone*, the CFPB initially defended the Rule, including vigorously opposing any stay of the effective date of the Rule. However, after the new presidential administration replaced the CFPB Director, the CFPB changed course and agreed to delay both the litigation and the effective date of the Rule—thereby depriving Proposed Intervenors the benefits of the Rule for (at minimum) months. *See* Not. of Relevant Developments & Unopposed Mot. to Stay Proceedings, *Cornerstone Credit Union League, et al. v. CFPB*, 4:25-cv-16 (E.D.

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from consumer credit reports. 90 Fed. Reg. at 3279. These voluntary changes resulted in a seventy-eight percent drop in the percentage of consumers with medical debt on their credit reports. 90 Fed. Reg. at 3333; *see also* ECF 1 ¶ 73. As a result, the assertion is not factually supported.

Tex. Feb. 5, 2025), attached as Exhibit 1. Shortly thereafter, the new administration issued a press release in which it specifically identified the Medical Debt Rule as one that it plans to "end[]." *CFPB Isn't a Wall Street Regulator, It's a Main Street Regulator*, The White House (Feb. 10, 2025), https://www.whitehouse.gov/articles/2025/02/cfpb-isnt-a-wall-street-regulator-its-a-main-street-regulator/. Additionally, the administration vowed to dismantle the CFPB entirely—including any legal defense of its Rules—and promptly undertook efforts to do so. These efforts have only been temporarily paused by federal court orders in *NTEU v. Vought*, 25-cv-381 (D.D.C.), pending evidentiary hearings on current status of the CFPB's winddown. *See* Peter Charalambous & Soo Rin Kim, *It's 'shoot first and ask questions later' as DOGE tries to dismantle CFPB: Official*, ABC News, Mar. 10, 2025, https://abcnews.go.com/US/cfpb-official-testifies-doges-chaotic-attempts-dismantle-agency/story?id=119651855.

STATEMENT OF THE ISSUES AND LEGAL STANDARD

Proposed Intervenors request that the Court either grant their motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) or grant their motion for permissive intervention under Federal Rule of Civil Procedure 24(b). The requirements for intervention as of right under Rule 24(a)(2) are:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

La Union del Pueblo Entero v. Abbott, 29 F.4th 299, 305 (5th Cir. 2022). Intervention as of right is a matter of law; a district court's decision is reviewed de novo. *See Ford v. City of Huntsville*, 242 F.3d 235, 239 (5th Cir. 2001). The test for intervention of right is a "liberal standard." *NextEra Energy Cap. Holdings, Inc. v. D'Andrea*, 2022 WL 17492273, at *1 (5th Cir. Dec. 7, 2022).

For permissive intervention under Rule 24(b), "[f]irst, the district court must decide whether the applicant's claim or defense and the main action have a question of law or fact in common. If this threshold requirement is met, then the district court must exercise its discretion in deciding whether intervention should be allowed." *Stallworth v. Monsanto Co*., 558 F.2d 257, 269 (5th Cir. 1977). Rule 24(b)'s "claim or defense" requirement is construed "liberally." *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975). As Plaintiffs concede, "[c]ourts often allow organizations to permissively intervene where, as here, the potential intervenors may provide unique perspective or expertise for a shared legal defense." ECF No. 33 at 5. Plaintiffs satisfy this standard as well.

As the Fifth Circuit has explained, "Federal courts should allow intervention when no one would be hurt and the greater justice could be obtained." *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016). The Fifth Circuit has a "broad policy favoring intervention," and the movant has a "minimal burden." *La Union*, 29 F.4th at 305 (quoting *Miller v. Vilsack*, 2022 WL 851782, at *4 (5th Cir. Mar. 22, 2022)).

SUMMARY OF THE ARGUMENT

Proposed Intervenors have satisfied their showing to intervene to defend the Medical Debt Rule. Plaintiffs do not challenge the timeliness of Proposed Intervenors' motion. While Plaintiffs challenge the remainder of the prongs, their approach misstates and misapplies the governing law. Proposed Intervenors clearly demonstrate that they have an interest in the matter that is the subject of this proceeding; the outcome of the proceeding will, practically, impair their interests; and their interests are inadequately protected in this litigation. As a result, they are entitled to intervene as of right under Rule 24(a)(2). In the alternative, permissive intervention under Rule 24(b) is appropriate because Proposed Intervenors' interests align with defense of this action, their participation will lead to a properly considered result, and intervention will not prejudice any party.

ARGUMENT

I. Proposed Intervenors Have a Right to Intervene.

A. Proposed Intervenors Each Have Legally Protectable Interests in the Existence and Effective Enforcement of the Medical Debt Rule.

Plaintiffs first assert that Proposed Intervenors do not meet the second prong for intervention—that they have a "direct, substantial, legally protectable interest" in the outcome of this litigation, *Edwards v. City of Houston*, 78 F.3d 983, 1004 (5th Cir. 1996)—because their interests are simply "a generalized ideological preference" for the Rule. ECF No. 33 at 7. This is not the case. As demonstrated by their declarations, each of the Proposed Intervenors will be directly and meaningfully impacted positively by implementation of the Rule. It is undisputed that implementation of the Rule will remove negative items from both Mr. Coleman's and Mr. Deeds' credit reports, which will benefit them as set forth in their declarations. Mr. Coleman and Mr. Deeds clearly have "a legally protectable interest as the intended beneficiary of a government regulatory system." *Wal-Mart Stores, Inc.*, 834 F.3d at 569. Likewise, Tzedek DC and NMCLP meet the interest requirement as they "expend significant resources" related to the issues impacted by the Rule, and the Rule "changes the legal landscape for what it takes to carry out" their missions. *La Union*, 29 F. 4th at 306 (noting "the burden is lower for a 'public interest group' raising a 'public interest question'" (quoting *Brumfield v. Dodd,* 749 F.3d 339, 344 (2014))). Both organizations represent, advocate for, and educate clients who have been harmed by the reporting of medical debt; these clients are the intended beneficiaries of the Rule. Reversal of the Rule through this litigation would harm the interests that they have in protecting the benefits that they

would realize from the Rule. *See, e.g.*, *La Union*, 29 F.4th 299; *Wal-Mart Stores, Inc.*, 834 F.3d at 566–569.[2]

Plaintiffs' arguments to the contrary rest on a series of logical fallacies and factual inaccuracies. Plaintiffs first insist that Proposed Intervenors cannot be meaningfully impacted by the outcome of this litigation because the Rule has not yet gone into effect. *See* ECF No. 33 at 8. This argument does not track law or logic. In contrast to Plaintiffs' assertions, the status quo is that the Rule was set to go into effect in March 2025. If it does not go into effect, the law will have changed from the status quo—as it already has by the delayed effective date. While the CFPB can repeal or modify the Rule through lawful rulemaking under the APA, after notice and comment, it is not legally entitled to do so by fiat through concession in litigation. *See* 5 U.S.C. § 553; *see, e.g.*, *Env't Defense Fund, Inc. v. Gorsuch*, 713 F.2d 802, 814 (D.C. Cir. 1983); *Nat'l Res. Def. Council, Inc. v. U.S. E.P.A.*, 683 F.2d 752, 764 (3d Cir. 1982). The Fifth Circuit routinely recognizes interests in exactly this situation, where a person or organization would be impacted by the implementation or reversal of a new law or regulation. *See, e.g.*, *La Union*, 29 F.4th 299 (Republican committees entitled to intervene as of right to defend a Texas state law from challenge by other parties); *Wal-Mart Stores, Inc.*, 834 F.3d at 566–69 (5th Cir. 2016) (trade association entitled to intervene as of right to defend regulation); *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994) (trade association entitled to intervene as of right to defend federal agency action).

[2] Notably, NMCLP advocates for this and similar legal changes and Tzedek DC publicly advocated for adoption of the Rule, *see* Comment in Support of Proposed Rule Amending Regulation V; Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information from Tzedek DC (Aug. 8, 2024), *available at* https://www.regulations.gov/comment/CFPB-2024-0023-0760, further supporting their intervention. *Wal-Mart Stores, Inc.*, 834 F.3d at 566-569 ("'public spirited' civic organizations that successfully petition for adoption of a law may intervene to vindicate their 'particular interest' in protecting that law." (quoting *City of Houston v. Am. Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012)).

The remainder of Plaintiffs' arguments only relate to David Deeds and Harvey Coleman, not Tzedek DC and NMCLP. Plaintiffs assert that no authority creates a legal interest in the removal of medical debt from Mr. Deeds' and Mr. Coleman's credit reports. ECF No. 33 at 8.[3] This argument is a tautology: Plaintiffs in essence claim that there can't be a legal interest in the Rule, because the Rule is not legal. This is backward and, at best, is an argument about the merits of their claim, with little relevance to the question of intervention. The Rule itself creates a legal interest. It is this very interest that Proposed Intervenors wish to protect by defending the Rule in this litigation from Plaintiffs' specious arguments, like the one it advances here. Indeed, while the legal interest need not be "legally *enforceable*," *La Union*, 29 F.4th at 305 (quoting *Texas v. United States*, 805 F.3d 653, 659 (5th Cir. 2015)), Mr. Deeds and Mr. Coleman would have such a heightened interest if the Rule goes into effect.

Plaintiffs next claim that Proposed Intervenors' motion fails because "15 million Americans [exist] with medical debt tradelines on their credit reports," and, as a result, Proposed Intervenors do not have a "personal" interest in the matter. ECF No. 33 at 8. Again, Plaintiffs misstate the law. There is no requirement that other people cannot share the same interests as the proposed intervenors; this would be preposterous and bar intervention in nearly all cases. Instead,

[3] Plaintiffs attempt to defeat intervention by incorporating their (legally unsupported) merits argument, asserting that "an artificially clean credit profile is not a protectible interest" because, according to them, the First Amendment forbids regulation of credit reporting. ECF No. 33 at 8. Proposed Intervenors will address this argument in detail in briefing on the motion for preliminary injunction, if permitted to intervene. It is worth noting, however, that Mr. Coleman's son was covered by Medicaid at the time he received medical care, such that he should not be liable for the debt on his credit report and its removal would not be "artificial."

the Rule simply requires that proposed intervenors have a direct and meaningful stake in the outcome, which, of course, Proposed Intervenors do.[4]

Plaintiffs go on to take this argument one step further, arguing that Proposed Intervenors' interests in this litigation must not overlap with the interests of others, for the sake of efficiency. Doc. 33 at 8. Plaintiffs cite *Espy* for this assertion, when in fact it stands for the opposite: that intervention should be granted as widely as possible to avoid duplicative litigation. *Espy*, 18 F.3d at 1207. More importantly, this proposition has no bearing here, where no one other than Proposed Intervenors is seeking to intervene in this case.

Plaintiffs conclude by claiming that intervention would be "inconsequential" because the CFPB could simply "retract or refuse to enforce the Rule." Doc. 33 at 9. Of course, the CFPB is *not* entitled to do this without first going through notice and comment rulemaking. *See* 5 U.S.C. § 553. And if it did go through the proper process to withdraw the Rule, this litigation, of course, would be moot. Regardless, these are not the facts before this Court, and this is not the legal standard for Rule 24(a)(2). Right now, the CFPB has not undertaken any rulemaking process, and this litigation is ongoing. Because the outcome of this litigation will impact Proposed Intervenors' "direct, substantial, legally protectable interest[s]," they have satisfied the second prong for intervention as of right.

[4] Plaintiffs' reliance on *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452 (5th Cir. 1984) *(NOPSI)*, is misplaced. As the Fifth Circuit subsequently explained: "*NOPSI* did not create a bar preventing all intervention premised on 'economic interests.'" *Wal-Mart Stores, Inc.*, 834 F.3d at 567 (limiting and distinguishing *NOPSI* including on the basis that it related to a private dispute, not an effort to defend a regulation, and holding that a trade group had "a legally protectable interest" sufficient to intervene to defend a regulation); *see also Epsy*, 18 F.3d at 12.

B. The Disposition of this Litigation May, as a Practical Matter, Impair or Impede Proposed Intervenors' Interests.

Plaintiffs entirely fail to dispute Proposed Intervenors' straightforward showing that their interests will be impeded if Plaintiffs are successful in blocking the Rule through this litigation. *See Statement of Relevant Facts, supra*; ECF Nos. 23-4 ¶¶ 13–16; ECF No. 23-5 ¶¶ 8–11 ECF Nos. 23-6, 23-7. But Plaintiffs argue that these impacts are meaningless because Proposed Intervenors Harvey Coleman and David Deeds could simply pay off their debts or wait years for the information to age off their credit reports. (Plaintiffs raise no arguments about Tzedek DC and NMCLP and thus concede that they meet this prong. *See, e.g.*, *La Union*, 29 F.4th at 307.) And Plaintiffs' argument only proves that Mr. Deeds' and Mr. Coleman's interests *would be* impaired: if the Rule is overturned, as Plaintiffs recognize, Mr. Coleman and Mr. Deeds will be required to either spend time and money negotiating with the purported creditors to improve their credit reports; or they will have to spend years waiting for the derogatory items to be removed from their credit reports. Moreover, they will not be protected from purported medical debts being added to their reports in the future—a very real concern. *See* ECF No. 23-4 ¶ 13 (detailing Mr. Deeds' over $60,000 in medical debt and his fear that it will soon be reported, despite his payment plans). *See La Union*, 29 F.4th at 307 (intervenors' rights impaired where the new law "grants rights to [proposed intervenors and their constituents] that could be taken away if the plaintiffs prevail").

C. Proposed Intervenors' Interests Are Not Adequately Represented by the Parties.

Proposed Intervenors have also met the final prong for intervention as of right—inadequate representation by the existing parties to the litigation. As the Fifth Circuit has explained, "[b]ecause intervention necessarily occurs before the litigation has been resolved, [Proposed Intervenors] need only show that 'the representation *may* be inadequate." *Wal-Mart Stores, Inc.*, 834 F.3d at 569 (quoting *Texas*, 805 F.3d at 662). Proposed Intervenors' burden for meeting this

prong is "minimal." *Id.* (quoting *Edwards*, 78 F.3d at 1005; *see also Texas*, 805 F.3d at 663; *Brumfield*, 749 F.3d at 346; *Espy*, 18 F.3d at 1207. Plaintiffs rest their argument on their inaccurate assertion that the government is presumed to adequately represent the interests of the intervenors and that a stronger showing of inadequacy is necessary when a governmental agency is a party. ECF No. 33 at 9–10. But the Fifth Circuit has expressly rejected this assertion and clarified that no such presumption of adequacy applies to government agencies, only to sovereign entities such as the State of Texas or the United States, where the presumption is that the government is "presumed to represent the interests of all its citizens." *Entergy Gulf States La., L.L.C. v. U.S. E.P.A.*, 817 F.3d 198, 203 n. 2 (5th Cir. 2016) (quoting *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994), and analyzing and rejecting Plaintiffs' assertion and holding "because EPA is a governmental agency and not a sovereign interest, a stronger showing of inadequacy is *not* required."); *see also Wal-Mart Stores, Inc.*, 834 F.3d at 569 n.7 (explaining "the government-representative presumption does not inherently apply whenever a state or federal agency is a party."); *Miller v. Vilsack*, 2022 WL 851782, at *2 & n.4 (5th Cir. Mar. 22, 2022) (finding that presumption of adequate representation not at play where the defendant is an agency).[5] As a result, the only question is whether the CFPB currently has "the same ultimate objective" in the litigation as Proposed Intervenors. *Entergy*, 817 F.3d at 203.

Regardless, because Proposed Intervenors have demonstrated adversity of interest and/or that the government is unlikely to act, they satisfy this prong. *See id.* at 204. Here, the CFPB has *already* taken action contrary to Proposed Intervenors' interests by agreeing to delay the effective date of the Rule. *See* Not. of Relevant Dev'ts & Unopposed Mot. to Stay Proceedings, *Cornerstone*

[5] Plaintiffs cite *Hopwood*, 21 F.3d at 605, in support of their assertion. *Entergy* expressly rejected this interpretation. 817 F.3d at 203 n.2.

Credit Union League, et al. v. CFPB, 4:25-cv-16 (E.D. Tex. Feb. 5, 2025), attached as Exhibit 1. This delay has direct and meaningful negative impacts on Proposed Intervenors, who have been required to live without the benefits of the Rule for several additional months. This is more than sufficient. *See Entergy*, 817 F.3d at 204–06 (delay shows adversity of interest); *Miss. Bankers Assoc. v. Consumer Fin. Prot. Bureau*, 2025 WL 694462, at *3 (S.D. Miss. Mar. 4, 2025) (agreement to delay suggests abandonment of rule's defense). And, even if this were not enough, it is clear that the CFPB will not meaningfully defend the Rule after the stay expires.

Plaintiffs state that Proposed Intervenors fail to demonstrate adversity of interest because they only show the administration's hostility through its "broad, generalized complaints against the CFPB as an entity" without evidence of "a change in position *regarding the Rule itself*." ECF No. 33 at 11. But this is neither legally required nor factually correct. First, Proposed Intervenors "need only show that 'the representation *may* be inadequate.'" *Wal-Mart Stores, Inc.*, 834 F.3d at 569, not that it must be. The CFPB's decision to stay the Rule, after previously defending against such a stay, demonstrates its likely inadequacy; as does the administration's hostility to the CFPB's prior work generally. Moreover, the administration *has* made statements about its hostility to this particular Rule, including in a February 10 press release in which the White House castigated the CFPB as "another woke, weaponized arm of the bureaucracy that leverages its power against certain industries" and specifically singled out the Medical Debt Rule as one of only a few (alleged) examples: "**CFPB granted itself broad new powers in the waning hours of the lame duck Biden administration.** Described as classic 'government overreach,' the agency . . . unilaterally buried $50 billion in medical debt." *CFPB Isn't a Wall Street Regulator, It's a Main Street Regulator,* The White House (Feb. 10, 2025), https://www.whitehouse.gov/articles/2025/02/cfpb-isnt-a-wall-street-regulator-its-a-main-street-regulator/ (linking to an article criticizing the

Medical Debt Rule) (emphasis in original) (White House Press Release). The press release concludes, "Under the administration of President Donald J. Trump, the weaponization ends right now," *id.*, clearly indicating the administration's decision to not only fail to defend the Rule but to seek to overturn it.[6] Given these circumstances, if Proposed Intervenors had waited any longer to file their motion, Plaintiffs would have undoubtedly argued that the motion was untimely.

Indeed, the CFPB has not taken a position on intervention, which it could have done to "communicate the vigor of its anticipated defense, but elected not to." *Miss. Bankers Assoc.*, 2025 WL 694462, at *3. As one court recently found, this indicates that the CFPB will not meaningfully or vigorously defend the Rule. *Id.* Proposed Intervenors have undoubtedly met their minimal burden of showing that the CFPB might not defend the Rule. As a result, they have satisfied the standard for intervention as of right.

II. Alternatively, Permissive Intervention Is Appropriate.

Rule 24(b) allows permissive intervention where the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). In this Circuit, "the 'claim or defense' portion of Rule 24(b) is to be construed liberally." *United States ex rel. Hernandez v. Team Fin., L.L.C.,* 80 F.4th 571, 577 (5th Cir. 2023) (quoting *Newby v. Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006)) (internal marks omitted) (reversing

[6] Plaintiffs' selective quotes from a declaration filed in *NTEU v. Vought*, 1:25-cv-381 (D.D.C.), ECF No. 33 at 15, do not help its position. That suit involves a challenge to the extraordinary wholesale elimination of the CFPB. While the veracity of the declaration has been challenged, leading to the court in that case requiring the declarant Adam Martinez to appear for testimony, it has little bearing on the issue before this Court. There is no requirement that the agency be entirely dismantled for Proposed Intervenors to demonstrate that the CFPB is unlikely to defend their interests in this litigation (as it has already failed to do). Rather, as the Martinez declaration makes clear, the current CFPB has "refocus[ed] priorities," Martinez Dec. ¶ 4, including that it will "end[]" the Rule. *See* White House Press Release.

denial of permissive intervention). The "common question of law or fact" requirement is satisfied so long as an intervenor's arguments are "related to" the claims in the lawsuit, notwithstanding Plaintiffs' arguments to the contrary. *Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 825 (5th Cir. 2003); *see Miss. Bankers Assoc.*, 2025 WL 694462, at *2–3 (citing cases, setting forth the standards for permissive intervention in detail, and granting intervention to consumer groups seeking to defend CFPB rule). As described above at Part I.A, *supra*, under this liberal standard, Proposed Intervenors' interest shares a common question of law or fact with the main action—namely, whether the Rule is lawfully authorized and should be permitted to go into effect. *See Miss. Bankers Assoc.*, 2025 WL 694462, at *3. Plaintiffs do little to dispute this.[7]

Additional considerations for permissive intervention include "whether the intervenors are adequately represented by other parties[,] . . . whether they are likely to contribute significantly to the development of the underlying factual issues," *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 189 (5th Cir. 1989), and whether intervention will cause "undue delay or prejudice." Fed. R. Civ. P. 24(b)(3). As with intervention as of right, the presumption of adequate representation "may be rebutted on relatively minimal showing." *Clements*, 884 F.2d at 189. As described above, Proposed Intervenors more than adequately meet this standard. *See* Part I.C, *supra*; *see also, e.g.*, *Miss. Bankers Assoc.*, 2025 WL 694462, at *3.

Proposed Intervenors' perspectives support permissive intervention as well. Contrary to Plaintiffs' assertions, discovery in an APA case may be permitted in a variety of circumstances that could easily come to pass here. *KHOLLE Magnolia 2015, LLC v. Vidal*, No. CV H-22-1974, 2024 WL 3371040, at *1 (S.D. Tex. July 9, 2024); *Dep't of Com. v. New York*, 588 U.S. 752, 781–

[7] Plaintiffs also do not dispute that the motion is timely.

82, 139 S. Ct. 2551, 2574 (2019). As one court recently explained:

> [I]t seems undeniable that consumers groups such as the movants bring a perspective to the litigation that a large federal agency and America's banking sector either institutionally cannot or in their discretion will not. It is the voice of ordinary people. And the Court believes it would be beneficial for the movants to bring that perspective to bear, even if the course of litigation later reveals no need for discovery. It is better to do so now than "decide such questions blindly."

Miss. Bankers Assoc., 2025 WL 694462, at *3 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 434–35, 144 S. Ct. 2244, 2285–86 (2024) (Gorsuch, J., concurring) and quoting *id.* 603 U.S. at 402, 144 S. Ct. 2267 (majority op.)).

Finally, again, despite their protestations, Plaintiffs are not prejudiced by intervention. This prong does not entitle Plaintiffs to win their lawsuit by relying on the CFPB's failure to mount a meaningful defense of the Rule. They presumably expected defense of the Rule when they retained multiple counsel and filed their suit. Proposed Intervenors have suggested nothing other than that they will timely and adequately provide that defense, thereby assisting the Court in resolving this issue on the merits. And Proposed Intervenors have not requested that any briefing or hearing schedule be altered to account for their presence in the case.

Throughout their argument on permissive intervention, Plaintiffs attempt to impart additional legal requirements that do not exist, including a "motive" requirement and several assertions about purported "usurp[ing of] the CFPB's role," citing caselaw from other contexts and circuits. ECF No. 33 at 12–14. These assertions have no relation to the law regarding intervention under Rule 24 and are belied by Fifth Circuit precedent. In fact, this Circuit routinely permits intervenors to defend regulations whether or not the government will continue its defense. *See, e.g., La Union*, 29 F.4th at 305; *Wal-Mart Stores, Inc.*, 834 F.3d at 566–569; *Espy*, 18 F.3d 1202; *Miller*, 2022 WL 851782. Plaintiffs' unrelated arguments and reliance on inapt citations should be rejected.

Permissive intervention is thus appropriate as well.

CONCLUSION

For the foregoing reasons, Proposed Intervenors ask the Court to grant their motion to intervene.

Dated: March 12, 2025

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CERTIFICATE OF SERVICE

I certify that on March 12, 2025, the foregoing document was filed on the Court's CM/ECF system which sent notification of such filing to all counsel of record.

/s/ *Chi Chi Wu*

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CORNERSTONE CREDIT UNION LEAGUE AND CONSUMER DATA INDUSTRY ASSOCIATION, *Plaintiffs*, v. CONSUMER FINANCIAL PROTECTION BUREAU and SCOTT BESSENT, in his official capacity as Acting Director of the CFPB, *Defendants.*	No. 4:25-cv-00016-SDJ

NOTICE OF RELEVANT DEVELOPMENTS AND UNOPPOSED MOTION TO STAY PROCEEDINGS

Defendants the Consumer Financial Protection Bureau and Scott Bessent, in his official capacity as Acting Director of the Bureau, respectfully submit this Notice to inform the Court of recent developments relevant to this matter. The President removed the prior Director of the Bureau and designated Secretary of the Treasury Scott Bessent to serve as Acting Director, effective as of January 31, 2025. The Bureau's new leadership needs time to review and consider its position on various agency actions.

To allow the Acting Director time to consider the rule that Plaintiffs challenge in this case, "Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)" (Rule), 90 Fed. Reg. 3276 (Jan. 14, 2025), while preserving the status quo, Defendants will not oppose Plaintiffs' pending request for preliminary relief in part, insofar as Defendants do not oppose a 90-day stay of the Rule's March 17, 2025, effective date

(*i.e.*, a stay of the effective date until June 15, 2025). *See* 90 Fed. Reg. 8173 (Jan. 27, 2025) (providing effective date).

In addition, Defendants respectfully request that the Court stay this litigation for 90 days. A stay of the litigation is warranted because it will not prejudice any party if the Court enters the preliminary relief requested herein, and it will conserve the Court's resources by not having to consider an agency action before the agency has determined whether to revisit it. *See, e.g.*, *Headwater Rsch. LLC v. Samsung Elecs. Co.*, No. 2:23-CV-00103-JRG-RSP, 2024 WL 5080240, at *1 (E.D. Tex. Dec. 11, 2024) (in determining whether to stay litigation, district courts typically consider: "(1) whether the stay will unduly prejudice the nonmoving party, (2) whether the proceedings before the court have reached an advanced stage, … and (3) whether the stay will simplify issues in question in the litigation"); *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at *1 (E.D. Tex. Mar. 11, 2015) ("A district court has the inherent power to control its own docket, including the power to stay proceedings before it.").

In addition, because the Acting Director has not yet had an opportunity to review the Rule, counsel for the Bureau are not authorized to present any arguments on the merits of Plaintiffs' pending preliminary injunction motion at the hearing scheduled for Monday, February 10. Should the Court grant the request provided herein, Defendants further respectfully request that the Court vacate the February 10 hearing on Plaintiffs' Motion for Preliminary Injunction.

Counsel for Defendants have conferred with Counsel for Plaintiffs, and Plaintiffs do not oppose Defendants' requests contained herein. Plaintiffs request, however, that the Court reschedule the February 10 hearing on Plaintiffs' Motion for Preliminary Injunction to occur in 90 days. Defendants do not oppose Plaintiffs' request to reschedule the February 10 hearing.

Accordingly, Defendants respectfully request that the Court:

1. Grant Plaintiffs' Motion for Preliminary Injunction in part by staying the effective date of the Rule pursuant to 5 U.S.C. § 705 for 90 days, *i.e.*, until June 15, 2025, and reserving consideration of the remainder of the relief requested;
2. Grant Defendants' Motion to Stay, and stay this matter for a period of 90 days from the date of the Court's order; and
3. Vacate the February 10 hearing and, if the Court wishes, continue it for approximately 90 days as Plaintiffs request.

Date: February 5, 2025

Respectfully submitted,

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Deputy General Counsel
Kristin Bateman
Assistant General Counsel

/s/ Amanda J. Krause
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Counsel for Defendants the Consumer Financial Protection Bureau and Scott Bessent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Notice of Recent Developments and Unopposed Motion to Stay Proceedings was served electronically through the Court's ECF system.

Date: February 5, 2025 */s/ Amanda J. Krause*

CERTIFICATE OF CONFERENCE

I hereby certify that, on February 4, 2025 and February 5, 2025, counsel for Defendants conferred by email and by telephone with counsel for Plaintiffs regarding the attached Notice of Recent Developments and Unopposed Motion to Stay Proceedings. Plaintiffs do not oppose the relief requested therein.

Date: February 5, 2025 */s/ Amanda J. Krause*