



March 8, 2024

TRADE GROUPS SUE CFPB TO HALT CREDIT CARD LATE FEE RULE

As expected, the U.S. Chamber of Commerce, the American Bankers Association, the Consumer Bankers Association and three Texas trade groups filed suit against the Consumer Financial Protection Bureau ("CFPB") on March 7 to halt implementation of the CFPB's newly finalized rule on credit card late fees. See our ALERT of March 7, 2024.

The lawsuit came two days after the CFPB announced the finalized rule and on the same night that President Joe Biden celebrated the new rule as a victory for consumers during his State of the Union address.

The complaint alleges that the CFPB's final rule violates and the Administrative Procedures Act by (i) violating the requirements of the CARD Act and Dodd-Frank Act, (ii) evidencing arbitrary and capricious decision-making on multiple points, (iii) failing to appropriately make "secret" data available for public examination and comment and (iv) violating the Truth-in-Lending Act's effective-date provision. Additionally, the plaintiffs' allege that the CFPB violated the Appropriations Clause of the U.S. Constitution by funding the rulemaking with money drawn from the Federal Reserve. (The question of the CFPB's funding is currently before the Supreme Court, with a decision expected this term. See our [ALERT of Feb. 27, 2023](#).)

The case was filed in federal court in the Northern District of Texas and was assigned to U.S. District Judge Reed O'Connor. (Judge O'Connor was appointed by former President George W. Bush and his rulings have included a 2018 decision declaring unconstitutional the Affordable Care Act, which was subsequently reversed on appeal.)

Texas has been a favorable forum for cases against the CFPB recently, as the case currently before the Supreme Court challenging the CFPB's funding originated out of Texas (although it was the 5th Circuit that held the CFPB's funding is unconstitutional, overturning a District Court decision on appeal) and the nationwide injunction on the Small Business Lending Data also originated out of Texas. See our ALERTS of [April 28](#), [August 1](#) and [October 27, 2023](#).

For a copy of the U.S. Chamber of Commerce's complaint in the suit against the CFPB, contact us. In other news, the new rule also

came under fire on Capitol Hill in a hearing titled "Politicized Financial Regulation and its Impact on Consumer Credit and Community Development," held by the Subcommittee on Financial Institutions and Monetary Policy chaired by Rep. Andy Barr (R-KY), where critics leveled similar arguments regarding the potential effects, intended and unintended, likely to result.

We will continue to monitor the status of this case and the status of the final credit card late fee rule in light of this legal challenge. □

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