IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-812 DDD-KAS

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, AMERICAN FINANCIAL SERVICES ASSOCIATION, and AMERICAN FINTECH COUNCIL,

Plaintiffs,

v.

PHILIP J. WEISER, Attorney General of the State of Colorado, and MARTHA FULFORD, Administrator of the Colorado Uniform Consumer Credit Code,

Defendants.

AMICI CURIAE BRIEF OF AMERICAN BANKERS ASSOCIATION AND CONSUMER BANKERS ASSOCIATION IN SUPPORT OF PLAINTIFFS

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I. INTEREST OF AMICI CURIAE AND INTRODUCTION[1]

The American Bankers Association ("ABA") is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice for the nation's $23.7 trillion banking industry and its 2.1 million employees. ABA members provide banking services in each of the 50 states and the District of Columbia. Among them are state banks and savings associations of all sizes.

The Consumer Bankers Association ("CBA") is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans. Like the ABA, the CBA members include state banks of all sizes.

The ABA and CBA have many state-chartered member banks located outside Colorado who make loans in the states where they are located in conformity with those states' usury limits to borrowers who reside in Colorado, and their lending programs would be significantly impacted by the outcome of this litigation.

Amici's members have a significant interest in this case. First, their participation here was precipitated in large part by the amicus curiae brief filed recently by the Federal Deposit Insurance Corporation ("FDIC"), which contends, for the very first time since DIDMCA's enactment in 1980, that under Section 525 of DIDMCA, loans are "made in the state where the borrower enters into the transaction just as much as they are made in the state in which

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[1] The parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the preparation or submission of this brief; and no person other than the amici, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

the lender enters the transaction." (FDIC Br. at 5). Section 525 allowed states to opt out of the DIDMCA preemption provisions, but *only* "with respect to loans *made in* such State[.]," 94 Stat. 167, not "*received*," "*obtained*," or "*executed*" in that state, and loans are made by banks, not by their borrowers. The notion that a loan by an out-of-state bank is "made in" the state "where the borrower enters into the transaction" is wholly unsupported by the language of Section 525, prior precedent, the legislative history of DIDMCA, or *any* prior rule, regulation, or opinion letter by the FDIC. The FDIC's novel position in its amicus brief that interstate loans are made in both the lender and borrower's states came entirely out of the blue 44 years after DIDMCA's enactment and, as shown below, is not entitled to any deference. If adopted for the first time here, it would have profound ramifications far beyond the confines of this case. It would disrupt the parity and uniformity that Congress intended when it enacted DIDMCA. It would also create massive uncertainty for all federally-insured depository institutions, subjecting them to multiple and inconsistent state laws.

Federally-insured state banks, savings and loan associations, savings banks, and state-chartered federally-insured credit unions outside Colorado which make loans in their states to Colorado residents in conformity with their own states' usury laws would be irreparably harmed if this Court were to adopt the unfounded position by the Defendants and the FDIC that Section 3 of the Opt-Out Legislation empowers Colorado to impose its own interest rate and fee limitations on such loans. They would be placed at a severe competitive disadvantage vis-à-vis national banks that make loans to Colorado borrowers. Under the interpretation advocated by Defendants and the FDIC, Section 3 would impose the interest rate and fee limitations of Colorado law on state-chartered depository institutions from other states that make loans to Colorado borrowers, but those Colorado interest rate and fee limitations would remain

preempted under Section 85 of the National Bank Act, 12 U.S.C. § 85, insofar as national banks are concerned. That competitive inequality would fly in the face of the express and overriding Congressional intent to create parity between all federally-insured depository institutions and national banks when Congress enacted Sections 521-523 of the DIDMCA. Section 521 was enacted "[i]n order to prevent discrimination against State-chartered insured depository institutions" by authorizing them to lend at the same rates as the national banks with which they compete. 12 U.S.C. § 1831d(a). The legislative history of DIDMCA shows that the purpose of Section 525 of DIDMCA was to enable states to reimpose their own usury ceilings on loans made in their own states by their own state-chartered depository institutions to their own citizens.

The FDIC's motion for leave to file its amicus brief noted that several other states are considering proposed opt-out legislation. (ECF 38 at p. 7 n. 11). Acceptance of the argument that loans are made in the borrower's state could have a ripple effect, which would increasingly devalue the worth of the state bank charter and imperil the future of the dual banking system. Federal banking laws have long sought "to preserve the dual banking system by promoting 'competitive equality' between national and state banks." *Johnson v. Bank of Bentonville*, 122 F.Supp.2d 994, 998 (W.D. Ark. 2000).

In the watershed decision in *Marquette Nat'l Bank v. First of Omaha Serv. Corp*., 439 U.S. 299 (1978), the Supreme Court held that Section 85 of the National Bank Act allows a national bank to charge interest at the rates allowed in its home state to all of its credit card customers nationwide, and this federal authority preempts the interest rate limitations in its customers' home states. The Court stressed in *Marquette* that if the meaning of the term "located" in Section 85 "were to depend on the whereabouts of each credit-card transaction," this would "throw into confusion the complex system of modern interstate banking." *Id*. at 312. By

the same token, if the legality of interest and fees charged by a state-chartered depository institution to borrowers in other states depended upon the varying laws of the states where their borrowers are located, the complex system of modern interstate banking would likewise become balkanized and "throw[n] into confusion."

It also bears emphasis that applying Colorado interest rate and fee limitations to loans made in other states by state-chartered depository institutions in compliance with the laws of the states where they are located will not only harm out-of-state depository institutions, it will also harm consumers in Colorado. As noted above, the Legislation will place out-of-state state-chartered depository institutions at a pronounced competitive disadvantage compared to national banks in making loans to Colorado residents, and diminished competition in the marketplace will mean that credit opportunities for Colorado consumers will become more scarce and more expensive, particularly for those deemed less creditworthy. It is doubtful that many out-of-state depository institutions will find it economically feasible to make loans to non-prime borrowers under the Colorado interest rate and fee limitations, particularly when the country's interest rates go up. By contrast, national banks, who are unaffected by the Opt-Out Legislation, will remain unconstrained by the interest rate and fee limitations of Colorado law.

II. ARGUMENT

A. The Legislative History of DIDMCA

The legislative history of the usury preemption deregulation provisions in Sections 521-523 of DIDMCA demonstrates that the entire focus was on state banks and other federally-insured state depository institutions located in states with relatively modest usury ceilings that made it economically infeasible to lend money to residents *within those same states* because of prevailing high interest rates. The sponsors of the usury provisions were Senators Pryor and Bumpers of Arkansas, which had a 10% usury ceiling established by the Arkansas

Constitution on loans made to Arkansas residents. However, notwithstanding that state law limit, national banks located in Arkansas had the right under Section 85 of the National Bank Act to make loans to Arkansas residents at 1% above the Federal Reserve Discount Rate, which was then 12%. Inflation was soaring, and state banks in Arkansas simply could not afford to make loans to Arkansas residents within the 10% interest rate ceiling. Senator Pryor explained the dire and unfair situation confronting Arkansas' state banks and savings banks:

> Consider the situation in my State of Arkansas. We have, as the Senators well know by now, a strict 10-percent interest rate ceiling on all types of loans. *A customer seeking a loan to buy a car is unlikely to find the funds at a State bank since State banks can charge no more than 10 percent interest*, which is not enough to cover the cost of funds plus service costs. *This customer is forced to turn to a national bank which can presently charge 13 percent.* That customer is also likely to deposit his money in that bank.
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> * * *
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> This is, strictly speaking, not a "usury" issue but a matter of competitive equality … [W]hen the discount rate is higher than the usury limit, the State banks and savings and loans are placed in an impossible grossly unfair situation.
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> * * *
>
> *We have 210 State banks in my State, and every one of them is going to be applying for a federal charter if something is not done.* I personally think the dual [banking] system is a good thing, but we in Arkansas cannot keep it unless we get some relief on this thing.

125 Cong. Rec. 30655 (Nov. 1, 1979) (emphasis added).

While Congress provided in Section 525 of DIDMCA that states could opt out of the preemption provisions in Section 521-523 "with respect to loans made in such State[.]" (94 Stat. 167), there is absolutely nothing in the legislative history to suggest that this language was referring to interstate loans made by banks in their own states and in compliance with their own states' interest ceilings to borrowers in an opt-out state. To the contrary, as discussed above, the

driving force for the enactment of DIDMCA was to create parity between national banks and state-chartered lending institutions in their same state (*e.g.*, the "210 State banks" in Arkansas referred to by Senator Pryor). The opt-out right in Section 525 could be exercised if states, as sovereign masters over their own state-chartered lending institutions, wanted to reimpose their usury ceilings on loans made in their own states by their state-chartered lending institutions. Section 525 was *not* intended to hamstring state-chartered banks by subjecting them to the usury limits of their borrowers' states on interstate loans made in the states where the banks are located in conformity with those states' usury limits.

The legislative history shows that Congress was focused solely on creating parity between state-chartered depository institutions and national banks with respect to the right to charge interest at 1% above the Federal Reserve Discount Rate on local loans. Significantly, the legislative history does *not* reflect statements by legislators concerning how Section 525 of DIDMCA would relate to *interstate* lending and the very recent opinion by the Supreme Court in *Marquette*, which held that national banks were empowered under Section 85 of the National Bank Act to utilize the interest rates allowed by their home states' laws in their credit card transactions with borrowers around the country.

Because of the legal uncertainty that existed until the *Marquette* decision in 1978 about whether national banks could charge interest allowed by the states where they were located in their interstate loans, there were very few national banks that engaged in interstate consumer lending at the time that DIDMCA was enacted, and even fewer, if any, state banks engaged in such interstate lending. Even after the *Marquette* opinion was rendered, it took a few years before state and national banks launched robust interstate lending programs. That was a result of the fact that the lion's share of the banks that desired to expand their interstate lending programs

were then located in states like New York that had relatively low usury ceilings and there were severe restrictions on a bank chartered in one state being affiliated with a bank chartered in another state. Those hurdles were not overcome until 1981 and 1982, when Delaware and South Dakota, respectively, enacted legislation deregulating their usury laws and authorizing out-of-state banks to establish affiliated credit card banks in their states. 63 Del. Laws, ch. 2, § § 2-23 (1981); SL 1982 ch. 336 § 1.

Thus, the legislative history shows that when Congress enacted Section 525 of DIDMCA, it was focused exclusively on local lending, *i.e.*, the Arkansas customer seeking a car loan from a state bank who was referenced in the statement by Senator Pryor quoted above. Congress did not intend to allow an opt-out state to limit the interest rates on interstate loans made by banks in other states pursuant to their interest rate authority under DIDMCA and the laws of the states where the banks are located.

The express purpose of Section 521 was to place federally-insured state banks in a position of parity and competitive equality with national banks, which historically had been statutorily favored with respect to usury authority. Indeed, the preamble of Section 521 expressly states that it was enacted "[i]n order to prevent discrimination against State-chartered insured depository institutions …" 12 U.S.C. § 1831d(a). To effectuate this intent, Congress incorporated in Section 521 of DIDMCA the very same language utilized in 12 U.S.C. § 85, which governs loans made by national banks.

The legislative history of Sections 521-523 of DIDMCA demonstrates that Congress intended to confer upon all federally-insured state depository institutions the same interest rate authority long enjoyed by national banks under Section 85. For instance, Senator Proxmire, then-Chairman of the Senate Committee on Banking, Housing and Urban Affairs,

explicitly stated during floor debate that, under Sections 521-523, "State chartered institutions are given the benefits of 12 U.S.C. §85 . . . ." 126 Cong. Rec. S6,900 (March 27, 1980). Senators Bumpers and Pryor, who were co-sponsors of S.1988, the bill which served as the genesis for Sections 521-523 of DIDMCA, likewise emphasized that Sections 521-523 were based upon Section 85. 125 Cong. Rec. S30,655 (Nov. 1, 1979) (Senators Pryor and Bumpers); 126 Cong. Rec. S6,907 (March 27, 1980) (Senator Bumpers).

At the commencement of hearings before the Senate Banking Committee on S. 1988, Chairman Proxmire stated, "This morning, we take testimony on legislation that will provide competitive equality among all financial institutions with respect to state usury lending limits". Hearings on S. 1988 before the Senate Comm. on Banking, Housing and Urban Affairs, 96th Congress, 1st Sess. (1979) at 1 (hereinafter "Hearings"). Several months later, during Senate debate, Chairman Proxmire reiterated that the language of Sections 521-523 "seeks to create *a level playing field so that all institutions may compete on the same terms*." 126 Cong. Rec. S6,894 (March 27, 1980) (emphasis added). He further stated that "Title V also contains a provision [Section 521] which provides parity, or competitive equality, between national banks and State chartered depository institutions on lending limits." 126 Cong. Rec. S6,900 (March 27, 1980). *See also*, 126 Cong. Rec. H. 6,966 (March 27, 1980) (Rep. Reuss stated that Sections 521-523 of DIDMCA conferred upon all federally insured institutions the authority "to do what national banks are already permitted.").

Senator Bumpers emphasized at the hearings on S. 1988 that "this is simply a parity bill . . . . It's an equalization bill to put the two banks [national banks and state banks] on equal footings, allow them to compete with each other." (Hearings at 43). Later, during Senate debate on DIDMCA, Senator Bumpers declared once again that "[t]his change in the law

allows competitive equity among financial institutions, and reaffirms the principle that institutions offering similar products should be subject to similar rules." 126 Cong. Rec. S6,907 (March 27, 1980).

The opt-out right conferred by Section 525 of DIDMCA was intended simply to allow states to undo parity with respect to loans made in their *own* states by their *own* state-chartered depository institutions to their own citizens by reimposing their own state law usury ceilings on such loans. Nothing in the legislative history demonstrates that Congress intended Section 525 to undo parity between national banks and state-chartered banks located outside the opt-out state that make interstate loans from the states where they are located at rates allowed by those states' laws to borrowers in the opt-out state.

To the extent that Section 3 of the Opt-Out Legislation purports to apply to interstate loans made by state-chartered depository institutions outside Colorado to Colorado borrowers, it would completely eviscerate the "level playing field" between state and national banks that Congress intended to create when it enacted DIDMCA.

B. Congress Contemplated That, Under Section 525, a Loan is "Made" in the State Where Lending Functions are Performed

1. Unlike Another Interest Rate Preemption Statute Enacted Just Three Months Earlier, Section 525 Refers Only to Loans "Made in" The Opt-Out State, Not Loans "Made or Executed in" That State

The ABA and CBA strongly support Plaintiffs' position that Section 525's reference to where loans are "made" necessarily requires a focus on where the lender makes a loan, not where the borrower executes the loan contract or receives the loan proceeds. As Plaintiffs emphasize, Congress did not "expand Section 525 'to loans made ***or received*** in any State[,]" and "a party . . . 'does not get to . . . insert convenient language to yield [its] preferred meaning.'" (Pl. Reply Br. at 4) (citation omitted). If Congress had intended Section 525 to

encompass loans that are executed in the opt-out state by either borrowers or lenders, it knew full well how to say so.

Indeed, just three months before enacting Section 525, the 96th Congress had amended the National Housing Act by adding a new Section 529, codified at 12 U.S.C. § 1735f-7 ("Section 529"). Significantly, Section 529 of the National Housing Act allowed states to countermand preemption with respect to loans that are either "*made or executed in*" the state. 12 U.S.C. § 1735f-7(b) (emphasis added). Thus, Congress clearly knew how to be explicit on this issue, and its choice three months later to use only the lender-centric word "made" in Section 525 of DIDMCA without also adding the more bilateral term "executed" is highly significant. *See, e.g., Rotkiske v. Klemm*, 140 S.Ct. 355, 361 (2019) ("A textual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision"); *Marietta Mem'l Hosp. Emp. Health Ben. Plan v. DaVita, Inc.*, 142 S.Ct. 1968, 1974 (2022) ("Congress knew how to write such a law. It did not do so in this statute").

The 96th Congress clearly intended Section 525 of DIDMCA to apply only to loans made by banks while physically present in the opt-out state, while preemption overrides under Section 529 of the National Housing Act could be read more broadly to apply to loans that are either "made" in the state by the lender *or* "executed" in the state by the borrower or lender. The decision by Congress not to include the term "executed" in Section 525 is meaningful in light of the nearly-contemporaneous inclusion of that term in Section 529 of the National Housing Act.

2. The Framework Proposed by Defendants and the FDIC for Determination of Where a Loan is "Made" for Section 525 Opt-Out Purposes is Improperly Based on Contract Formation Principles, Rather Than Loan-Making Activities

Defendants and the FDIC draw support for their assertion that loans are made where the borrower is located from one variation of one edition of Black Law Dictionary's definition of "make" (Defs.' Br. at 10-11, quoting Black's Law Dictionary (11th ed. 2019) ("To legally perform, as by executing, signing, or delivering (a document) <to make a contract>"), and Dormant Commerce Clause cases dealing with contracts and transactions generally. (*Id*. at 11); (FDIC Br. at 4-7). Defendants conveniently ignore the primary Black's Law Dictionary (11th edition) definition of "make," which is "To cause (something) to exist <to make a record>]."

The Dormant Commerce Clause cases relied upon by Defendants and the FDIC, which were decided 28 years (*Quik Payday*) and 35 years (*Integrity Advance*) after the enactment of DIDMCA, may support the notion that the borrower's state has interests in a finance company loan transaction that are Constitutionally sufficient to warrant their authority to regulate that transaction. However, those cases obviously shed no light on the Congressional understanding of where a loan is made for purposes of Section 525, and they do not stand for the proposition that bank loans are "made in" the borrower's state for purposes of Section 525. The FDIC acknowledges as much but conflates the making of a contract with the making of a loan. *See* FDIC Br. at 6-7 ("courts interpreting federal law have concluded that interstate contracts, including loans, are made both in the state in which the borrower enters into the transaction and the state in which the lender enters into the transaction"). But this conflation of "loan" and "loan contract" is improper and misleading. Under any ordinary understanding of these concepts, a loan contract provides that the lender *makes* a loan and the borrower receives and repays it. The

determination of where a loan is made depends on where the lender is located when it performs the loan contract, not where the borrower receives or executes it.

It is also noteworthy that the Defendants' and FDIC's interpretation of where a loan is made would create a morass with respect to open-end credit and point-of-sale transactions. If a Colorado resident uses a credit card while vacationing in Florida, the notion that the loan is made at "the borrower's physical location" (Defs.' Br. at 10-11) or "where the borrower enters into the transaction" (FDIC Br. at 5) would require application of Florida's usury laws. In effect, the legally unsupported framework advocated by the FDIC and Defendants creates an unmanageable mess, and surely could not be what Congress intended.

C. No Deference is Owed to the FDIC's Amicus Brief

In its amicus brief, the FDIC has argued for the very first time that "loan transactions between parties in different states are made in the state where the borrower enters into the transaction just as much as they are made in the state where the lender enters the transaction…" (FDIC Br. at p. 5). Significantly, the FDIC does not point to *any* prior FDIC regulation, rule, or opinion letter where it has adopted that position with respect to Section 525 of DIDMCA, nor could it do so. In fact, as correctly pointed out by Plaintiffs (Pl. Br. at 13; Pl. Reply Br. at 8-9), the FDIC's newly adopted argument set forth in its amicus brief is contrary to its past opinion letters and those issued by other Federal banking agencies as well.

The FDIC and Defendants' reliance on the "valid when made" final regulation issued by the FDIC on July 22, 2020 (85 Fed. Reg. 44,146, 44,153), is plainly misplaced. (FDIC Br. at 10; Defs.' Br. at 9). That regulation did not address where a loan is "made" for purposes of Section 525 of DIDMCA. Indeed, the FDIC press release regarding that regulation was entitled "FDIC Issues Rule to Codify Permissible Interest on Transferred Loans," and the press release explained that the regulation was simply intended "to codify the agency's longstanding

guidance that the valid interest rate for a loan is determined when the loan is made, and will not be affected by a subsequent sale, assignment, or other transfer of the loan. The rule reaffirms the longstanding 'valid when made' doctrine, a nearly 200-year old principle in contract law."[2] https://www.fdic.gov/news/press-releases/2020/pr20074.html

Although the FDIC is careful not to explicitly argue that deference should be accorded to its newly-adopted position in its amicus brief concerning where a loan is made for purposes of Section 525, it nonetheless strongly suggests that its position is entitled to be given substantially more weight by the Court than the arguments made by the parties. *See, e.g*., FDIC Unopposed Motion for Leave to File An Amicus Curiae Brief (ECF 38) at 5-6 ("this Court often allows amicus participation from federal banking agencies seeking to offer their interpretive assistance on the meaning of federal banking laws"); *id*. at 6 ("neither party can replicate the FDIC's expertise and experience in analyzing the FDIC Act and other statutory provisions related to it (including Section 525))."

No deference should be accorded to the FDIC's amicus brief with respect to the issue of where a loan is made for purposes of Section 525. The Supreme Court, the Tenth Circuit Court of Appeals, and other appellate courts have repeatedly held that no deference is owed to "agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice." *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204, 212 (1988). *Accord United States v. Mead Corp*., 533 U.S. 218, 228 (2001) ("near indifference" is accorded to an agency "interpretation advanced for the first time in a litigation brief"); *E.I. DuPont de Nemours*

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[2] The FDIC could have proposed a regulation defining where a loan is "made" for purposes of Section 525 at the same time that it proposed its "valid when made" regulation, but failed to do so, even though there were two jurisdictions (Iowa and Puerto Rico) that had previously exercised their Section 525 opt-out right.

& Co. v. Smiley, 138 S.Ct. 2563 (June 28, 2018) (Concurrence by Justice Gorsuch, joined by Chief Justice Roberts and Justice Thomas respecting denial of certiorari) (questioning whether according deference to an agency position expressed for the first time in an amicus brief would "undermine the Administrative Procedure Act's structure by incentivizing agencies to regulate by amicus brief" and noting that "some agencies (including the one before us) have apparently become particularly aggressive in 'attempt[ing] to mold statutory interpretation and establish policy by filing 'friend of the court' briefs in private litigation'"); *Been v. O.K. Indus*., 495 F.3d 1217, 1227 (10th Cir. 2007) ("we afford the USDA's position as stated in its amicus brief before the Eleventh Circuit little to no deference"); *Shikles v. Sprint/United Mgmt. Co*., 426 F.3d 1304, 1315 (10th Cir. 2005) ("[A]micus briefs … do not reflect the deliberate exercise of interpretive authority that regulations and guidelines demonstrate"); *Smith v. Aegon Cos. Pension Plan*, 769 F.3d 922, 927, 929 (6th Cir. 2014) (declining to accord deference to DOL amicus briefs because "the only indication here that the Agency has adopted this particular interpretation of ERISA is the amicus briefs themselves," and condemning "the Secretary's 'regulation by amicus' in this case.").

It has been 44 years since the enactment of DIDMCA, but the FDIC still has yet to propose a regulation setting forth its view as to where a loan is made for purposes of Section 525. According deference to the FDIC's newly-announced views on that issue in its amicus brief would impermissibly allow the agency "to create *de facto* a new regulation." C*hristensen v. Harris County*, 529 U.S. 576, 588 (2000). *Accord Christopher v. SmithKline Beecham Corp*., 635 F.3d 383, 395 (9th Cir. 2011), *aff'd*, 567 U.S. 142 (2012) (refusing to defer to agency "interpretations of statutes expressed for the first time in case-by-case amicus filings," because

that would "sanction bypassing of the Administrative Procedure Act and notice-and-comment rulemaking").

III. CONCLUSION

For the reasons set forth above, Amici Curiae ABA and CBA respectfully submit that Plaintiffs' Motion for Preliminary Injunction should be granted.

Dated: May 10, 2024

Respectfully submitted,

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CERTIFICATE OF TYPE-VOLUME COMPLIANCE

Excluding the portions of the motion excepted under DDD Civ. P.S. III(A)(3), the Proposed Amici Curiae hereby certify that the foregoing brief contains 4,574 words and thus complies with the type-volume limitations set forth in DDD Civ. P.S. III (A)(3).

May 10, 2024

/s/ Matthew A. Morr
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Attorney for Proposed Amici Curiae American Bankers Association and Consumer Bankers Association

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2024, I filed a true and correct copy of the Unopposed Motion of American Bankers Association and Consumer Bankers Association for Leave to File Amici Curiae Brief in Support of Plaintiffs via CM/ECF, which will generate notice by electronic mail to all counsel who have appeared via CM/ECF.

May 10, 2024

/s/ Matthew A. Morr
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