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

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE OF PROPOSED DEFENDANT-INTERVENORS NEW MEXICO CENTER ON LAW AND POVERTY, TZEDEK DC, DAVID DEEDS, AND HARVEY COLEMAN

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INTRODUCTION

The Consumer Financial Protection Bureau ("CFPB" or "Bureau"), pursuant to statutory authority granted to it by Congress, promulgated a rule to remove medical debt from consumer credit reports. That rule, titled 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), removes an estimated $49 billion in medical debt from the credit reports of around 15 million Americans and will provide them easier access to credit, housing, and employment.[1] *See CFPB Finalizes Rule to Remove Medical Bills from Credit Reports*, CFPB Website (Jan. 7, 2025), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-remove-medical-bills-from-credit-reports/, attached as Ex. 2. The Rule provides meaningful, tangible benefits to Americans who have incurred medical debt and the organizations that serve them.

Medical debt, of course, will remain subject to collection by creditors and debt collectors. Nonetheless, ACA International and Specialized Collection Systems, Inc. (collectively "Plaintiffs"), a trade association of debt collectors and a debt collector, respectively, oppose the rule because it makes it harder for them to use coercive tactics to engage in the collection of medical debts. As debt collectors are well aware, inclusion of debt on a credit report poses a risk

[1] Although the Rule only applies to lenders making credit decisions, people often need a good credit score to access housing and employment, for example to pay a security deposit or first month's rent or to lease or buy a car to get to work. *See, e.g.*, Comment on Proposed Rule of Neighborhood Legal Services Program at 4 ("Medical debt collections reported on an individual's credit report can impact their ability to buy a home based upon the inability to secure a mortgage."), *available at* https://downloads.regulations.gov/CFPB-2024-0023-0951/attachment_1.pdf; Comment on Proposed Rule of National Disability Institute at 15 (consumer noting that medical debt impact on credit score made person "unable to purchase my own car, which drastically limited my employment and education opportunities."), *available at* https://downloads.regulations.gov/CFPB-2024-0023-1034/attachment_1.pdf.

to essential life needs such as housing and employment, as well as credit. One day after the final Rule was announced, Plaintiffs sued the Bureau to enjoin the Rule. Compl., ECF No. 1. The Bureau's deadline to respond to the motion is February 14, 2025. L.R. Civ. P. 7.

Prior to February 1, 2025, the Bureau vigorously defended the Rule, including through opposing a motion for preliminary injunction in another case filed by industry groups against the Rule. *See* Mem. Opp'n Mot. Prelim. Inj., *Cornerstone Credit Union League, et al. v. CFPB*, 4:25-cv-16 (E.D. Tex. Jan. 23, 2025). But the Bureau has recently reversed course. As of Saturday, February 8, 2025, newly installed CFPB Acting Director Russell Vought ordered all work at the Bureau to cease, including that all effective dates of all Rules be suspended and that no filings be made in any litigation, other than to seek a pause. *See* Email from Acting Director Vought, obtained from Philip Melanchthlon Wegmann (@PhilipWegmann), X, https://x.com/philipwegmann/status/1888409309937070128?s=46&t=I41S_6HTDCUVmJ5HUDfHw, attached as Ex. 1; Ryan Mac & Stacy Cowley, *Federal Financial Watchdog to Cease Activity*, N.Y. Times, Feb. 9, 2025, https://www.nytimes.com/2025/02/08/us/politics/cfpb-vought-staff-finance-watchdog.html. Also on Saturday night, Acting Director Vought posted on Elon Musk's social media platform X that the CFPB would be refusing its annual funding from the Federal Reserve. Ryan Mac and Stacy Cowley, *Federal Financial Watchdog to Cease Activity*, N.Y. Times, Feb. 9, 2025, https://www.nytimes.com/2025/02/08/us/politics/cfpb-vought-staff-finance-watchdog.html. On Sunday, all CFPB staff were ordered to work from home and the CFPB website homepage was no long available. *Id.* Acting Director Vought's actions follow his installation as Acting Director of the CFPB on Friday, February 7, and, that same day, Elon Musk's post of "RIP CFPB" on X after members of his "Department of Governmental Efficiency" (DOGE) physically entered the agency's headquarters. *Id.* On February 11, 2025, President Trump

confirmed his goal of eliminating the CFPB. Kate Berry, *President Trump confirms his goal is to eliminate the CFPB*, Am. Banker, Feb. 11, 2025, https://www.americanbanker.com/news/president-trump-confirms-his-goal-is-to-eliminate-the-cfpb (video at 1:26).

This whirlwind of activity apparently seeking to dismantle the Bureau—and eliminate its defense of its lawfully enacted rules as well as all other activities—comes after the prior Acting Director's stop-work orders issued on February 3 and 4 and the CFPB's agreement to a delay of the effective date of the Medical Debt Rule in the *Cornerstone* case. *See* Not. of Relevant Dev'ts & Unopposed Mot. to Stay Proceedings, *Cornerstone Credit Union League, et al. v. CFPB*, 4:25-cv-16 (E.D. Tex. Feb. 5, 2025); Order, *Cornerstone Credit Union League, et al. v. CFPB*, 4:25-cv-16 (E.D. Tex. Feb. 6, 2025) (delaying the effective date of the Rule by 90 days); *see also* Stacy Cowley, Consumer bureau backs off legal fights as Treasury officials take charge, N.Y. Times, Feb. 6, 2025, https://www.nytimes.com/live/2025/02/06/us/president-trump-news?searchResultPosition=1#consumer-bureau-backs-off-legal-fights-as-treasury-officials-take-charge (noting that the Bureau "reversed course this week and dropped its opposition" to an injunction delaying the Rule).

Proposed Intervenors New Mexico Center on Law and Poverty (NMCLP), Tzedek DC, Harvey Coleman, and David Deeds seek to step in to defend the Rule to protect their own interests, since it seems apparent that the Bureau will not. Proposed Intervenors NMCLP and Tzedek DC are organizations that each work to advance economic security and who, through their work, support Americans who suffer from the impacts of medical debt on their credit reports. Proposed Interventors David Deeds—a Texas truck driver suffering from medical debt related to cancer treatment—and Harvey Coleman—a resident of our nation's capital whose credit profile reflects

debt incurred from his young child's medical treatment—are individuals who will benefit from the implementation of the Rule. Each of the Proposed Intervenors moves to intervene to defend the Rule under Federal Rule of Civil Procedure 24(a)(2). Proposed Intervenors have acted promptly following the changes in Administration and Bureau leadership, making their motion timely. They seek to intervene to protect their legally cognizable interest in the matter that may be impaired by the disposition of this case. NMCLP and Tzedek DC each have a direct interest in preserving the Rule, which benefits their clients and constituencies, so that they can direct their limited resources to help their constituents and clients on matters other than addressing the impacts of medical debt on their credit reports; on the other hand, if the Rule is vacated or stayed, NMCLP and Tzedek DC will be required to devote their resources to addressing these impacts and will not be able to focus as much on their other efforts. Mr. Coleman and Mr. Deeds each have a direct interest in the Rule going into effect as planned, as it will eliminate medical debt from each of their credit reports that is currently negatively impacting their credit profiles and, as a result, their access to credit, housing, and employment, among other opportunities.

Alternatively, Proposed Intervenors seek permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B). Proposed Intervenors' motion is timely; and their defense shares issues of fact and law with that of Defendants Consumer Financial Protection Bureau and the current Acting Director ("Agency Defendants").

ARGUMENT

I. Proposed Intervenors Have a Right to Intervene.

In this Circuit, Proposed Intervenors are entitled to intervene as of right under Rule 24(a)(2) where (1) the motion to intervene is timely, (2) Proposed Intervenors assert an interest in the controversy, (3) the disposition of the case may impair or impede Proposed Intervenors' ability to protect that interest, and (4) that interest is not adequately represented by the existing parties. *La*

Union del Pueblo Entero v. Abbott, 29 F.4th 299, 305 (5th Cir. 2022) (citing *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015)). "Rule 24 is to be liberally construed." *Id.* (citing *Brumfield v. Dodd*, 749 F. 3d 339, 341 (5th Cir. 2014)); *NextEra Energy Cap. Holdings, Inc. v. D'Andrea*, No. 20-50168, 2022 WL 17492273, at *2 (5th Cir. Dec. 7, 2022). Courts "allow intervention where no one would be hurt and the greater justice could be attained." *John Doe #1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) (internal citation omitted); *see also La Union*, 29 F.4th 305 (noting "our policy favoring intervention" and the intervenor's "minimal burden" (internal marks and citation omitted)). Proposed Intervenors here easily meet each of the four conditions for intervention as of right.

A. This intervention motion is timely.

Proposed Intervenors' motion is timely. Rule 24(a)(2)'s timeliness requirement considers: (1) how long the potential intervenor knew or reasonably should have known of her stake in the case; (2) the prejudice, if any, the existing parties may suffer because the potential intervenor failed to intervene when she knew or reasonably should have known of her stake in that case; (3) the prejudice, if any, the potential intervenor may suffer if the court does not let her intervene; and (4) any unusual circumstances. *Glickman*, 256 F.3d at 376. The "timeliness clock" begins to run when a proposed intervenor knew or should have known of its stake in the subject case or when it knew that its stake would not be protected by the matter's existing parties, *not* when it first learned of the existence of the subject action. *Id.* at 376-78; *see also Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977). Proposed Intervenors demonstrate timeliness under these considerations.

Proposed Intervenors "sought to intervene 'as soon as it became clear' that [their] interests 'would no longer be protected' by the parties in the case." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 279 (2022) (quoting *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977)) (allowing intervention even after appellate decision was rendered, shortly after

learning that the state official would cease defending the rule and within the timeframe to seek *en banc* review). Timeliness analyses are "'contextual,' and should not be used as a 'tool of retribution to punish the tardy would-be intervenor, but rather [should serve as] a guard against prejudicing the original parties by the failure to apply sooner.'" *Ross v. Marshall*, 426 F.3d 745, 754 (5th Cir. 2005) (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)). Proposed Intervenors have acted promptly to respond to the apparent change in the Bureau's position on the outcome of the Rule. Further, their intervention at this stage would cause no prejudice to the parties.

Within the past week—and especially within the past few days—the federal government has made its hostility to the work of the CFPB and the Rule clear. Proposed Intervenors have acted promptly in light of the recent developments at the CFPB and the impact of those developments on Proposed Intervenors' interests in this action. The Trump Administration's position could not affect the government's litigation positions until after January 20, 2025. Even after President Trump's inauguration, the CFPB remained under the same leadership that issued the Rule. Proposed Intervenors reasonably—and, as indicated by the government's continued defense of the Rule in *Cornerstone*—relied on the government's "continued defense of the [Rule]." *Cook Cnty. v. Texas*, 37 F.4th 1335, 1341-42 (7th Cir. 2022), *cert. denied sub nom.* 143 S. Ct. 565 (2023). On February 1, 2025, however, President Trump fired CFPB Director Rohit Chopra. *See* Stacy Cowley, *Trump Administration Fires Consumer Bureau Chief*, N.Y. Times, Feb. 1, 2025, https://www.nytimes.com/2025/02/01/business/cfpb-rohit-chopra.html. Shortly thereafter, President Trump's first Acting Director issued a directive for the Bureau to cease all activities, and on February 5, the Bureau reversed its prior position and sought a court order delaying the effective date of the Medical Debt Rule. While the stated purpose of that action was to provide the Bureau time to review its next steps, subsequent activities, including now-Acting Director Vought's

refusal of annual funding and expansion of the stop work order, make it clear that Intervenors can no longer "count on [the government] to defend the challenged regulation . . . [and] must be allowed to intervene to ensure the regulation's continued defense." *Cook Cnty. v. Mayorkas*, 340 F.R.D. 35, 45 (N.D. Ill. 2021).

Proposed Intervenors filed this motion promptly, a mere seven days after the Bureau acquiesced to a delay in the effective date of the Rule and four days after Acting Director Vought refused the Bureau's annual funding allocation and expanded the prior stop work order. Any earlier intervention would have been unnecessary. This motion is thus well within the lengths of time this Circuit has deemed timely. *See Rotstain v. Mendez*, 986 F.3d 931, 938 (5th Cir. 2021) (citing Fifth Circuit precedent treating intervention as timely where intervenors delayed three weeks, one month, thirty-seven days, and forty-seven days past the accrual of their interest); *Edwards v. City of Houston*, 78 F.3d 983, 1000-01 (5th Cir. 1996) (citing case where five month lapse found not unreasonable and noting that most cases rejecting interventions as untimely concern motions filed after final judgment is entered).

Intervention will cause no prejudice to the Court or the parties in this matter—the "most important consideration" in evaluating timeliness. *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970); *see also Glickman*, 256 F.3d at 378 ("Prejudice must be measured by the delay in seeking intervention, not the inconvenience to the existing parties of allowing the intervener to participate in the litigation" (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1206 (5th Cir. 1994))). Proposed Intervenors are not seeking to modify any pleading or briefing schedules or any deadlines in this matter. To the contrary, Proposed Intervenors seek to intervene in time to timely oppose Plaintiffs' motion for preliminary injunction by the February 14, 2025, opposition deadline (or any later deadline set by the Court) and thereby assist the Court in reaching a reasoned

decision on that matter. This is necessary because, pursuant to the Acting Director's directive, it is likely that the Bureau will take no action in this litigation other than to possibly seek a stay.[2] *See* Ex. 1. Should intervention be granted (and even if the motion remains pending when other deadlines occur), Proposed Intervenors will file all briefs on the date the government's briefs would otherwise have been due. The only consequences that intervention will have for Plaintiffs "are those commonly associated with defending a ruling or judgment on appeal." *Ross*, 426 F.3d at 756. Such "inconveniences" do not constitute sufficient prejudice to deny intervention, *id*., and, in any event, were not created by the, at most, seven calendar days between Proposed Intervenors' interest diverging from that of the government and filing this motion.

B. Proposed Intervenors each have legally protectable interests in the existence and effective enforcement of the Medical Debt Rule.

Proposed Intervenors David Deeds and Harvey Coleman are individuals who are currently suffering the impacts of medical debt appearing on their credit reports. The outcome of this litigation will impact their credit profiles and, as a result, their ability to access housing, employment, their insurance rates, the credit limits, other forms of credit, and numerous other areas of their lives. Proposed Intervenors Tzedek DC and New Mexico Center on Law and Poverty serve and advocate for Americans who are impacted by medical debt, and the outcome of this litigation will impact where they are able to direct their limited resources to further their core missions. If the government fails to defend the Rule, Intervenors must.

To successfully intervene, an intervenor must have a "direct, substantial, legally protectable interest" in a case. *Edwards v. City of Houston*, 78 F.3d 983, 1004 (5th Cir. 1996) (en

[2] The motion for preliminary injunction has not been mooted by the *Cornerstone* ruling because it seeks a delay beyond the ninety-day delay granted in that matter. To the extent that it is modified to simply seek a ninety-day delay or otherwise held in abeyance until the end of that stay, Proposed Intervenors believe it would be moot.

banc) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)). This is not a demanding standard: "an interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *Texas*, 805 F.3d at 659. Rule 24(a) recognizes a broad range of interests. For example, the Fifth Circuit allowed intervention on the basis of petition organizers' longstanding advocacy against their mayor and city council. *City of Houston v. Am. Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012).

"The interest requirement may be judged by a more lenient standard if the case involves a public interest question or is brought by a public interest group." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014) (internal citation omitted). "Rule 24(a)(2) does not require 'that a person must possess a pecuniary or property interest to satisfy the requirement of Rule 24(a)(2).'" *La Union*, 29 F.4th at 305 (quoting *Mothersill D.I.S.C. Corp. v. Petroleos Mexicanos, S.A.*, 831 F.2d 59, 62 (5th Cir. 1987)). Prospective interference with access to opportunities can constitute a legally protected interest; and "the 'intended beneficiary of a government regulatory system' has a legally protected interest in a case challenging that system." *NextEra Energy Cap. Holdings, Inc. v. D'Andrea*, No. 20-50168, 2022 WL 17492273, at *3 (5th Cir. Dec. 7, 2022) (quoting *Wal-Mart Stores v. Tex. Alchoholic Beverage Comm'n*, 834 F.3d 562, 567-69 (5th Cir. 2016), and citing numerous cases). In short, "[t]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1203 n.10 (5th Cir. 1992) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)).

Here, Mr. Coleman and Mr. Deeds are clearly intended direct beneficiaries of the Rule. *See NextEra Energy Cap. Holdings, Inc. v. D'Andrea*, 2022 WL 17492273, at *3; *see also CFPB*

Finalizes Rule to Remove Medical Bills from Credit Reports, CFPB Website (Jan. 7, 2025), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-remove-medical-bills-from-credit-reports/ (stating that the goal of the Rule is to "protect consumers" like Mr. Coleman and Mr. Deeds "from harms from medical debt"), attached as Ex. 2. The Rule further directly impacts Mr. Coleman's and Mr. Deeds' access to credit opportunities, such that his interests are directly impacted. *See NextEra Energy Cap. Holdings, Inc.*, 2022 WL 17492273, at *3 (citing cases).

David Deeds is a 62-year-old Texas resident and truck driver. Deeds Dec. ¶¶ 1, 3, attached as Ex. 3. Mr. Deeds voted for President Trump in the past three presidential elections, but he supports the Rule and believes that medical debt should not be included in credit scores, in part because of his own experience. *Id.* ¶ 17. Over more than a decade, Mr. Deeds worked hard to improve his credit after a period of homelessness. *Id.* ¶ 9. Mr. Deeds' credit profile is extremely important to him because of its necessity in obtaining housing, transportation, and employment, and to make him feel secure that he will never be homeless again. *Id*. ¶¶ 9, 15. As of 2023, Mr. Deeds had a good credit score and was current on his bills, but in 2024, he was diagnosed with pancreatic cancer. *Id.* ¶¶ 4-8. As the result of his cancer treatment and related surgeries, Mr. Deeds incurred substantial medical debt. *Id.* ¶¶ 4-7, 10-12. Despite attempting to pay these debts, he recently received a $60,000 bill for his cancer surgery. *Id.* ¶ 11. While this debt is not yet reflected on his credit report, he is very concerned that it will be in the near future if the Rule does not go into effect. *Id.* ¶¶ 11, 13. Another medical debt related to Mr. Deeds' treatment does appear on his credit report, and he believes it has contributed to his lower credit score and, as a result, his denial of credit to make necessary home repairs. *Id.* ¶¶ 14-15. All of this has emotionally impacted Mr. Deeds. *Id.* ¶¶ 15-16. Implementation of the Rule will directly help Mr. Deeds by improving his

credit profile and making it easier for him to obtain credit, maintain his home, and provide him with security and peace of mind. *Id.* ¶ 16.

Harvey Coleman's credit report includes a medical debt in collections of about $1,300 related to a medical emergency faced by his young son, even though his son was covered by Medicaid at the time. Coleman Dec. ¶¶ 6-8, attached as Ex. 4. Mr. Coleman was denied financing for a cell phone—a particularly critical item to access services and participate in the economy—as a result, in part, of this debt appearing on his credit report. *Id.* ¶ 9. Mr. Coleman is making affirmative efforts, through a financial counseling program, to improve his credit; if the Rule goes into effect, this will help with these efforts. *Id.* ¶ 10. The Rule will remove the derogatory medical debt from Mr. Coleman's credit report and will enable Mr. Coleman to more easily access housing, credit, and employment. *Id.* ¶ 11.

Tzedek DC and NMCLP also each have an interest in the Rule, because it will make their pursuit of their missions and core work easier and allow them to conserve resources for other aims. "Non-property interests are sufficient to support intervention when, like property interests, they are concrete, personalized, and legally protectable." *Texas*, 805 F.3d at 658; *see Jurisich Oysters, LLC v. U.S. Army Corps of Eng'rs*, No. CV 24-106, 2024 WL 3639528, at *1 (E.D. La. Aug. 2, 2024) (finding environmental advocacy groups interest in an action about a National Marine Fisheries Service preservation project based on "local concerns for restoration and protection of the marshlands, people, animals, fisheries, and plants of southeastern Louisiana" sufficient to allow intervention), *on reconsideration*, No. CV 24-106, 2024 WL 4346410 (E.D. La. Sept. 30, 2024) (allowing environmental groups to intervene base on their particularized interest in local preservation). Tzedek DC and NMLCP, as public interest groups that may be subject to a more lenient standard for intervention, thus have more than a generalized preference in how this case is

decided and thus have a "stake in the matter" supporting intervention. *Texas*, 805 F.3d at 657 ("the inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way").

Tzedek DC is a non-profit organization with a mission of safeguarding the legal rights and financial health of DC residents who face the consequences of debt collection and credit-related obstacles, including those arising from medical debt. Levinson-Waldman Dec. ¶ 3, attached as Ex. 5. Because of Tzedek DC's limited resources, it must regularly make difficult decisions about how to direct those resources to advance its mission; when one issue is resolved, Tzedek DC can shift its resources to other priorities. *Id.* ¶ 5. As part of its work, Tzedek DC has a Medical Debt Project that provides legal and financial counseling specifically around medical debt collection issues, including credit reporting. *Id.* ¶¶ 7-9. Tzedek DC focuses substantial financial resources and staff time on this work and budgeted this year with the expectation of the Rule going into effect, thereby decreasing its workload around medical debt credit reporting. *Id.* ¶¶ 9-10. If the Rule does not go into effect, Tzedek DC will likely exceed its budget for the project, leading to the redirection of funds from other projects. *Id.* ¶ 10. Tzedek DC provides legal services, including helping clients dispute credit reporting of medical debt and representing clients who are pressured to pay alleged medical debt over other bills to avoid the impacts on their credit. *Id.* ¶¶ 11-12. Tzedek DC further provides financial counseling to clients who are impacted by medical debt credit reporting, including advising clients about addressing medical debt on their credit reports to improve their credit and advising clients on how to budget when they cannot access credit as the result of their credit scores. *Id.* ¶¶ 13-15. The need for Tzedek DC's legal and financial counseling services focused on medical debt tradelines would be eliminated by the Rule, which is reflected in Tzedek DC's budget. *Id.* ¶¶ 10-15. In addition, Tzedek DC engages in community outreach and education;

if the Rule does not go into effect, Tzedek DC will have to remove other items from its curriculum and print different material to ensure that it continues to cover medical debt credit reporting. *Id.* ¶¶ 16-17. In short, if the Rule is upheld, Tzedek DC will be able to redirect resources from medical debt tradeline-related work to other work that advances its mission. *Id.* ¶¶ 10, 18.

The New Mexico Center on Law and Poverty (NMCLP) is a non-profit organization with a mission of advancing economic and social justice, including by ensuring that every New Mexican has access to quality, affordable healthcare and remains free of medical debt and the impacts of medical debt collection. Manne Dec. ¶¶ 5, 7, attached as Ex. 6. Because of NMCLP's limited resources, it must regularly make difficult decisions about how to direct those resources to advance its mission. *Id.* ¶ 6. When one issue is resolved through legal or regulatory change, NMCLP can shift its resources to other priority areas that it has previously not been able to address. *Id.* NMCLP advocated for the recent passage of a state law that imposes requirements on medical debt collection in New Mexico, but the effectiveness of that statute is undermined by medical debt credit reporting. *Id.* ¶¶ 7-9. As a result, NMCLP has had to devote resources to combat the impacts of medical debt credit reporting, including by paying staff members to conduct community outreach and education related to the impacts of medical debt credit reporting. *Id.* ¶ 10. If the Rule becomes effective as intended, NMCLP will be able to devote these resources to other activities, but if the Rule is vacated, NMCLP will be required to continue to expend these resources in this manner. *Id*. In addition, NMCLP directly represents New Mexicans in litigation challenging the harms stemming from medical debt credit reporting; expenditure of resources on litigation around this issue will no longer be necessary if the Rule goes into effect. *Id.* ¶ 11. Finally, NMCLP will be devoting resources to advocating for passage of a state law to remove medical debt from credit reporting and other advocacy to mitigate the harms of medical debt credit reporting, if the Rule is

not implemented. *Id.* ¶ 12. The impact of the Rule would also be able to be felt in NMCLP's housing and health care access work. *Id.* ¶¶ 13-14. Overall, the Medical Debt Rule materially benefits NMCLP's mission and work, and if the Rule does not go into effect, NMCLP will have to reallocate its limited resources accordingly.

Proposed Intervenors have an interest in this matter as consumers who have applied for credit and organizations representing the interests of consumers. *Texas*, 805 F.3d at 659 (noting that interest required of intervenor defendant is less than that required for plaintiff's standing). Thus, as set forth above, Proposed Intervenors have interests in the outcome of this litigation that clearly meet the standard for Rule 24(a)(2).

C. Proposed Intervenors' interests will be impaired if Plaintiffs succeed.

As detailed above, Proposed Intervenors have a significant interest in having the Medical Debt Rule take effect, precisely the outcome Plaintiffs seek to prevent. A robust defense of the Rule is necessary to protect this interest. Without intervention, there is a meaningful risk that the government will not adequately defend the Rule in this litigation, which in turn increases the likelihood of an adverse outcome. It is also reasonable to expect that the government could acquiesce to an adverse ruling or efforts by Plaintiffs to delay via this litigation timely implementation of the Rule, both of which would impair Proposed Intervenors' interests. As the Fifth Circuit has explained:

> The impairment requirement does not demand that the movant be bound by a possible future judgment, and the current requirement is a great liberalization of the prior rule. Though the impairment must be practical and not merely theoretical, the parties seeking to intervene need only show that if they cannot intervene, there is a possibility that their interest *could* be impaired or impeded.

NextEra Energy Cap. Holdings, Inc., 2022 WL 17492273, at *4 (quoting *Brumfield*, 749 F.3d at 344; *La Union*, 29 F.4th at 307) (internal marks omitted and emphasis added).

The outcome of this litigation will ultimately determine whether the Rule is vacated or permitted to stand and, in the interim, whether its effective date is further delayed. As described above and in the attached declarations, which by law are taken as true at this stage, *see La Union*, 29 F.4th at 305, Proposed Intervenors' interests are directly linked to the Rule. If the Rule is vacated or its effective date further delayed as Plaintiffs wish, Proposed Intervenors will not have the opportunity to benefit from the Rule and accordingly will lose access to opportunities and will have to direct their resources to continue to address the problem of medical debt credit reporting. That the government may undertake a new rulemaking does not change this calculus. The only requirement of this factor is that Intervenors' interests *could* (not must) be impaired. In addition, if the Bureau decides to revisit its own lawfully promulgated and well-supported rule, including changing compliance dates, it must follow Administrative Procedures Act requirements for issuing a new or revised regulation. *See* 5 U.S.C. § 553; *see also, e.g.*, *Clean Water Action v. EPA*, 936 F.3d 308, 314 (5th Cir. 2019). If the CFPB attempts to circumvent these APA requirements by substantially delaying or evading implementation of the Final Rule via these proceedings, it would impede Proposed Intervenors' ability to protect their interests. Involvement in this litigation is necessary for Proposed Intervenors to protect their interests against those harms.

D. The CFPB will not adequately represent Intervenors' interests going forward.

Proposed Intervenors satisfy Rule 24(a)'s inadequacy requirement. The burden of proving that the existing parties do not adequately represent Intervenors' interests is minimal. *Glickman*, 256 F.3d at 380. "The potential intervener need only show that the representation *may* be inadequate." *Id.* (quoting *Espy*, 18 F.3d at 1207); *see Brumfield*, 749 F.3d at 346 ("We cannot say for sure that the state's more extensive interests will *in fact* result in inadequate representation, but surely they might, which is all that the rule requires."); *id.* (lack of unity in all objectives supports

finding of inadequate interest); *Heaton v. Monogram Credit Card Bank of Ga.*, 297 F.3d 416, 425 (5th Cir. 2002). Lack of adequate representation can be shown even in cases where the intervenor's and the government agency's interest "may diverge in the future, even though, at [the time of intervention] they appear to share common ground." *Heaton*, 297 F.3d at 425; *see also Trbovich v. United Mine Workers of Am.*, 404 U.S. 528 (1972) (reversing denial of a request to intervene by a private party who asserted a related interest to that of an existing government party); *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994) (holding that private timber purchaser associations were entitled to intervene in support of a government program, explaining that "[t]he government must represent the broad public interest, not just the . . . concerns of the timber industry").

Here, that showing is amply made. While this Circuit presumes adequate representation when a "putative representative is a governmental body," *Texas*, 805 F.3d at 661 (quoting *Edwards*, 78 F.3d at 1005), that presumption may be overcome when an intervenor's "'interest is in fact different from that of the [governmental entity] and that the interest will not be represented by [it].'" *Texas*, 805 F.3d at 662 (quoting *Edwards*, 78 F. 3d at 1005).

This Administration has already demonstrated its hostility to actions taken by the Bureau prior to February 1, 2025. On February 1, the President removed CFPB Director Chopra despite the fact that his term was scheduled to continue until late 2026 in order to make way for a new agenda at the Bureau. Rohit Chopra (@chopraCFPB), X (Feb. 1, 2024, 9:00 AM), https://x.com/chopracfpb/status/1885689592046559408?t=ivzOVxfQJUmJOzCR7TpPHQ. On February 3, 2025, newly installed Acting Director Scott Bessent directed the CFPB to "suspend the effective dates" for all final rules that have not yet taken effect—including the Final Rule—and instructed CFPB counsel to not "make or approve filings or appearances by the Bureau in any litigation, other than to seek a pause in proceedings." Emails from Bessent to CFPB Staff, Ex. 7.

Two days later, on February 5, the CFPB acquiesced to the motion and a ninety-day stay of the effective date of the Rule in the other case challenging the Medical Debt Rule—despite initially filing a brief in opposition to the plaintiffs' motion for preliminary injunction enjoining the Rule's effective date. Not. of Relevant Dev'ts & Unopposed Mot. to Stay Proceedings, *Cornerstone Credit Union League, et al. v. CFPB*, 4:25-cv-16 (E.D. Tex. Feb. 5, 2025). Thereafter, on February 7, Russell Vought took over as Acting Director of the CFPB, DOGE entered the CFPB offices, and the director of DOGE posted "RIP CFPB" to X. *See* Ryan Mac & Stacy Cowley, Federal Financial Watchdog to Cease Activity, N.Y. Times, Feb. 9, 2025, https://www.nytimes.com/2025/02/08/us/politics/cfpb-vought-staff-finance-watchdog. html. The next day, on Saturday, February 8, 2025, Acting CFPB Director Vought extended and broadened the stop work order, *see* Ex. 1, and posted on X that the CFPB would be refusing its annual funding from the Federal Reserve. Mac & Cowley, Federal Financial Watchdog to Cease Activity, New York Times, Feb. 9, 2025.

The Acting Director's directive to "[n]ot make or approve filings or appearances by the Bureau in any litigation, other than to seek a pause in proceedings" and to "[s]uspend the effective dates of all final rules" requires the CFPB to not defend the Rule in the present matter and to acquiesce to the stay sought in the motion for preliminary injunction. The Administration's other recent activity further indicates a strong likelihood that the CFPB will fail to vigorously defend the validity of the Rule on the merits. In addition, the government does not represent beneficiaries of the Medical Debt Rule and is not bound by their interests in its litigation decisions. Absent those client obligations, it may make decisions based on changed policy preferences or other constituent interests that might easily ripen into a divergence of representation, even if it were not clear that a divergence has already occurred. So even if the Court "cannot say for sure that the state's more

extensive interests will in fact result in inadequate representation," it is clear that "they *might*, which is all that [Rule 24] requires." *Brumfield*, 749 F.3d at 346 (emphasis added).

II. Alternatively, Proposed Intervenors Should Be Granted Permission to Intervene.

Permissive intervention is also appropriate here. Rule 24(b) allows this Court to "permit anyone to intervene" who has filed a "timely motion" and "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), (B); *Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977). "[C]laim or defense" is "construed liberally." *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975); *see also Stallworth*, 558 F.2d at 269. 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. *Cf. Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 825 (5th Cir. 2003) (common question of law and fact must be "related to" proposed intervenor's arguments). Courts often allow organizations to permissively intervene where, as here, the potential intervenors may provide unique perspective or expertise for a shared legal defense. The Proposed Intervenors qualify for permissive intervention because, at minimum, the Agency Defendants' and Proposed Intervenors' defense of the rule will share a common issue of law. Proposed Intervenors will provide the Court with their unique perspective and experience about the true impacts of the Rule as well as provide the Court with a robust legal defense of the Rule that may otherwise be lacking.

CONCLUSION

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

Statement Pursuant to Local Rule 7.1.D

Undersigned counsel has conferred with counsel for Defendant CFPB, who has stated that Defendant does not oppose this motion. Undersigned counsel has conferred with counsel for Plaintiffs, who have stated that they do not consent to the intervention.

Dated: February 12, 2025

Respectfully submitted:

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Counsel for Proposed Intervenors

*Motions for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I certify that on February 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/ *Carla Sanchez-Adams*