



Consumer Federation of America

Statement for the Record Submitted to
U.S. Committee on Financial Services' Subcommittee on Consumer Protection and Financial
Institutions on "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees
Costing Consumers Billions"

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The Consumer Federation of America (CFA) appreciates the opportunity to submit a statement for the record for the March 31, 2021 hearing, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions." CFA is a nonprofit association of more than 250 national, state, and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years, CFA has been at the forefront of ensuring that our marketplace is fair and safe by advancing the consumer interest. CFA has a broad portfolio of issues including financial services, banking, credit, investor protection, privacy, food safety, product safety, telecommunications, energy efficiency, housing, insurance, and saving. CFA's non-profit members range from large organizations, such as Consumer Reports and AARP, to small state and local advocacy groups, as well as unions, co-ops, and public power companies.

We write to highlight the continuing issue that pervasive, costly overdraft and nonsufficient fund (NSF) fees cause for consumers—especially given that these fees are borne predominately by those who can least afford them.

1. Recent Changes and Efforts

CFA applauds recent efforts by financial institutions to expand low- or no-cost banking options and accounts with no overdraft or NSF fees, such as the BankOn accounts powered by the work of Cities for Financial Empowerment. There are currently more than 200 low-cost accounts which prohibit overdraft and NSF fees, as well as other terms required by the Cities for Financial Empowerment Fund and BankOn National Account Standards.¹ However, these accounts do not replace the need for reform of predatory overdraft fees on other accounts.

CFA also applauds recent announcements by a few of America's largest banks to completely eliminate overdraft and NSF fees, like Capital One and Citibank, or drastically reduce these fees,

¹See <https://joinbankon.org/accounts/>.

like Bank of America. Other large and regional banks have made modest changes to their programs, like instituting 24-hour grace periods, eliminating NSF fees, or charging only one fee per day. Further, some banks have introduced responsible small dollar loan products to help provide consumers with an affordable credit option rather than relying on exploitive overdraft fees when facing budget shortfalls. Although CFA applauds these measures, they alone are inadequate, and consumers cannot rely solely on the goodwill of certain financial institutions.

In addition, CFA appreciates the recent action by Senator Chris Van Hollen (MD), Reverend Raphael Warnock (GA), Chairman of the U.S. Senate Committee on Banking, Housing, and Urban Affairs Sherrod Brown (OH), Senator Cory Booker (NJ), and Senator Jack Reed (RI) urging the country's largest banks, that have yet to make significant changes to their overdraft policies, to lower or eliminate overdraft fees.

Further, CFA appreciates the Consumer Financial Protection Bureau's (CFPB) recent efforts on overdraft fees, including publishing research on overdraft fees;² highlighting consumer experiences with overdraft fees;³ opening a public inquiry into the use of junk fees by financial institutions;⁴ and providing consumer education of varied overdraft fee policies across financial institutions.⁵

However, CFA views these changes and efforts taken together as insufficient in addressing the problem that abusive overdraft fees present to consumers.

2. The Problem of Overdraft Fees

Overdraft fees have become a financial powerhouse for the banks and credit unions that charge them. In 2019 alone, revenue for overdraft and non-sufficient funds ("NSF") fees reached \$15.47 billion.⁶ Despite recent changes by some financial institutions, many still have practices which maximize harm to consumers faced with overdrafting their account, and which make it extremely difficult for people with low balances to avoid being hit with an overdraft charge.

The timing of when debits and credits are posted to a checking account is opaque, complicated, and out of the consumers' control.⁷ Further, some banks have changed the order of certain transactions, so they debit from largest to smallest to increase the number of overdraft fees

² Éva Nagypál, *Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports*, CFPB (Dec. 2021), https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf.

³ See Joe Valenti, *Overdraft Fees Can Price People Out of Banking*, CFPB (Mar. 30, 2022), <https://www.consumerfinance.gov/about-us/blog/overdraft-fees-can-price-people-out-of-banking/>.

⁴ CFPB Press Release, *Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees: Agency Seeks Public Input on Fees on Bank Accounts, Credit Cards, and Other Financial Product*, (Jan. 26, 2022), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>.

⁵ Rebecca Borné & Amy Zirkle, *Comparing Overdraft Fees and Policies Across Banks*, CFPB (Feb. 10, 2022), https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/?_gl=1*w3apfp*_ga*Mjc2ODc2MTk3LjE2NDZMTY4NjU.*_ga_DBYJL30CHS*MTY0ODgzMDMzNi4zNC4xLjE2NDg4MzA1NDUuMA.

⁶ CFPB Press Release, *CFPB Research Shows Banks' Deep Dependence on Overdraft Fees*, CFPB (Dec. 1, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/>.

⁷ See CFPB Press Release, *Prepared Remarks of CFPB Director Rohit Chopra on the Overdraft Press Call*, CFPB (Dec. 1, 2021), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-overdraft-press-call/>.

triggered.⁸ Although many financial institutions have halted this practice, there is currently no law preventing this.

These fees bear no relationship to the cost banks incur for covering the overdraft charge—the average overdraft fee is \$35, while the most common transaction to trigger overdraft fees are debit transactions which average \$20 each.⁹

Research shows that not all overdraft fee harm is equal when it comes to the type of consumer that is most impacted. Nearly 80% of annual overdraft fee revenue comes from 9% of consumer accounts, which have 10 or more overdrafts per year.¹⁰ The disparity arises from a simple fact—lower-income individuals who have less money in their bank accounts shoulder a disproportionate amount of overdraft fees compared to other banking clients. The average account balance for an individual who has 10 or more overdrafts in a year is approximately \$350.

Consumers with low balance accounts are more susceptible to overdraft fees because they are likely to drop to lower levels than other account holders with greater financial safety nets. As a result, the average withdrawal implicating an overdraft fee is not high at all, but rather a mere \$20 debit card transaction.¹¹ While the average overdraft charge is \$34 on average,¹² because the common overdrafter averages over 10 overdraft fees annually, these individuals pay an average of \$380 in overdraft fees per year.¹³ These high charges make it difficult for these lower-income individuals to save, thus making them even more susceptible to future overdraft fees.

Further, this disproportionate harm has a disparate impact for Black and Hispanic borrowers. Currently, about 14 percent of Black and 12 percent of Hispanic households are unbanked, compared to 2.5 percent of white households.¹⁴ Unbanked individuals do not have any checking or savings account with a bank or credit union. Such a disparity would seem to suggest that because there are less Black and Hispanic individuals banking, the white population would have a disproportionately high amount of overdraft fees. However, the exact opposite is true. Instead, Black and Hispanics each represent around 19% of those who paid three or more overdraft-related fees annually, while representing only 12% and 17%, respectively, of the U.S. population as a whole.¹⁵ Such a disparity illustrates how harmful practices such as charging excessive overdraft fees can contribute to the financial exclusion of minority communities and can have devastating generational impacts on their wealth accumulation. Further, unexpected and high fees like overdraft fees are often cited as a reason for a formerly banked person to no longer have a bank account.¹⁶

⁸ See Ann Carns, *Customers Can Lose When Banks Shuffle Payments*, N.Y. TIMES (Apr. 11, 2014), <https://www.nytimes.com/2014/04/12/your-money/customers-can-lose-when-banks-shuffle-payments.html>.

⁹ Peter Smith, Shezal Babar & Rebecca Borné, *Banks Must Stop Gouging Consumers During the COVID-19 Crisis*, CENTER FOR RESPONSIBLE LENDING (CRL) (June 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf#page=12> [Hereinafter CRL, *Banks Must Stop Gouging* (June 2020)].

¹⁰ CFPB, DATA POINT: CHECKING ACCOUNT OVERDRAFT (July 2014), https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf [Hereinafter CFPB, *Data Point* (July 2014)].

¹¹ CRL, *Banks Must Stop Gouging* (June 2020).

¹² *Id.*

¹³ CFPB, *Data Point* (July 2014).

¹⁴ FDIC, *HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES* (2019), <https://www.fdic.gov/analysis/household-survey/2019execsum.pdf>.

¹⁵ PEW TRUSTS, *HEAVY OVERDRAFTERS: A FINANCIAL PROFILE* (April 2016), <https://www.pewtrusts.org/-/media/assets/2016/04/heavoverdrafters.pdf>.

¹⁶ Pg. 3, CRL, *Banks Must Stop Gouging* (June 2020).

3. Recommendations:

We acknowledge that some banks have made significant changes to their overdraft programs, with some ending all overdraft fees, others getting rid of their NSF fees, and some making more modest changes like 24-hour grace periods. While these actions are a huge benefit for these banks' customers, these measures are insufficient by themselves to make systemic change.

Voluntary action by banks is insufficient, as it will create an uneven playing field with varied protections or none at certain financial institutions. Basic consumer protections should be mandatory among all financial institutions, including banks and credit unions.

Given the substantial harm caused by overdraft fees as they currently stand, we ask Congress to take decisive action to stop abusive overdraft fees at all financial institutions and to establish safeguards to ensure these fees do not come back. We urge members of the committee to cosponsor and vote for Congresswoman Carolyn Maloney's Overdraft Protection Act (H.R. 4277).¹⁷

Additionally, we ask Congress to urge financial regulators—the CFPB, the Office of the Comptroller of the Currency, the Federal Reserve, the National Credit Union Association, and the Federal Deposit Insurance Corporation—to use their authorized power to address the overdraft problem.

Key parts of overdraft reform by both Congress and federal financial regulators should include:

- Limiting the number of fees that can be charged to 1 per month and 6 per year;
- Requiring that fees be “reasonable and proportional” to the cost of processing these transactions and the amount of the overdraft;
- Preventing institutions from re-ordering transactions to artificially increase their fees;
- Empowering consumers by requiring that they proactively opt-in to overdraft programs in the first place—rather than automatically being enrolled;
- Improving transparency and disclosures of overdraft coverage, cost, and practices; and
- Prohibiting charging overdraft fees for “debit holds” that exceed actual transaction amounts, among other strong measures.

Thank you for your consideration of our input. If you would like to discuss our concerns further, please contact Rachel Gittleman at rgittleman@consumerfed.org.

¹⁷ Press Release, Representative Carolyn B. Maloney (NY-12), Maloney Joins with Consumer Advocates to Introduce Overdraft Protection Act of 2021 (June 30, 2021), <https://maloney.house.gov/media-center/press-releases/maloney-joins-with-consumer-advocates-to-introduce-overdraft-0>.