



## Consumer Federation of America

Statement for the Record Submitted to  
U.S. Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Financial  
Institutions and Consumer Protection on "Examining Overdraft Fees and Their Effects on  
Working Families"

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The Consumer Federation of America (CFA) appreciates the opportunity to submit a statement for the record for the May 4, 2022 hearing, "Examining Overdraft Fees and Their Effects on Working Families." 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 appreciate the Subcommittee's attention to this important subject, and 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.<sup>1</sup> Reasonable monthly bank account fees, like those permitted by the BankOn National Account Standards, are more transparent and easier for consumers to compare than high back-end overdraft and NSF fees, which are extremely difficult to predict. However, these accounts do not replace the need for reform of predatory overdraft fees on other accounts.

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<sup>1</sup>See <https://joinbankon.org/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, 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 combined 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 Sherrod Brown (OH), Senator Cory Booker (NJ), and Senator Jack Reed (RI) urging the country's largest banks, which 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;<sup>2</sup> highlighting consumer experiences with overdraft fees;<sup>3</sup> opening a public inquiry into the use of junk fees by financial institutions;<sup>4</sup> and providing consumer education of varied overdraft fee policies across financial institutions.<sup>5</sup>

Overall, CFA views these changes and efforts taken together as insufficient in addressing the problem that abusive overdraft fees present to consumers and urges Congress, the Bureau, and other federal financial regulators to take decisive action to curb the practice of predatory overdraft fees.

Finally, CFA welcomed the U.S. House Committee on Financial Services' Subcommittee on Consumer Protection and Financial Institutions' Hearing on "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions." Although the recent hearing highlighted many important issues with overdraft fees, CFA would like to address a few concerns raised by certain members.

First, as CFA and fellow leading consumer advocacy organizations, Americans for Financial Reform (AFR), the Center for Responsible Lending (CRL), and National Consumer Law Center

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<sup>2</sup> 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](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf).

<sup>3</sup> 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/>.

<sup>4</sup> 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/>.

<sup>5</sup> 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](https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/?_gl=1*w3apfp*_ga*Mjc2ODc2MTk3LjE2NDZMTY4NjU.*_ga_DBYJL30CHS*MTY0ODgzMDMzNi4zNC4xLjE2NDg4MzA1NDUuMA).

(NCLC), articulated in recent comments to the CFPB's request for information on junk fees, the CFPB has the authority to regulate junk fees.<sup>6</sup> The Bureau's authority arises from a variety of places, including: the authority to adopt rules regulating unfair, deceptive acts, or practices (UDAAP); through a range of specialized statutes, including Truth in Lending Act (TILA), the Electronic Fund Transfer Act (EFTA), the Truth in Savings Act (TISA), or the Real Estate Settlement Procedures Act (RESPA); the specific authority to enact rules to ensure full, accurate, and effective disclosures both initially and over the term of a product and service, including issuing model disclosures and conducting trial disclosure programs.

Further, reforming abusive overdraft practices does not mean ending overdraft programs. As we articulate below and in recent comments to the CFPB regarding junk fees, both Congress and the Bureau should enact common sense regulations to reduce the burden of high cost overdraft fees. Consumers already have many of the protections articulated when using other forms of credit, like requiring that overdraft and nonsufficient funds fees be reasonable and proportional to cost.

In addition, as banks and financial institutions continue to review and reform their overdraft policies and practices, they need not reject transactions when a consumer overdraws an account. Instead, financial institutions can follow the lead of Capital One, which said when eliminating overdraft fees that it will continue to cover overdrafts at no charge.<sup>7</sup> Financial institutions can recover the overdrafted amount with an incoming deposit or with a reasonably priced line of credit.

## 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.<sup>8</sup> 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.<sup>9</sup> Further, some banks have changed the order of certain transactions, so they debit from largest to smallest to increase the number of overdraft fees triggered.<sup>10</sup> Although many financial institutions have halted this practice, there is currently no law preventing this.

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<sup>6</sup> See Comments to CFPB, NATIONAL CONSUMER LAW CENTER (NCLC), CFA, CENTER FOR RESPONSIBLE LENDING (CRL), AMERICANS FOR FINANCIAL REFORM (AFR), Request for Information Regarding Junk Fees Imposed by Providers of Consumer Financial Products and Services, pgs. 5-7 (April 2022), <https://consumerfed.org/wp-content/uploads/2022/05/Groups-Submit-Comments-in-Response-to-CFPBs-Request-for-Information-Regarding-Fees-Imposed-by-Providers-of-Consumer-Financial-Products-or-Services-5.2.22.pdf> [Hereinafter, NCLC, CFA, CRL, AFR, Junk Fee Comments (April 2022)].

<sup>7</sup> "All customers currently enrolled in overdraft protection will be automatically converted to No-Fee Overdraft on the launch date in early 2022." Press Release, CAPITAL ONE, Capital One Eliminates Overdraft Fees for Customers (December 2022), <https://www.capitalone.com/about/newsroom/eliminating-overdraft-fees/>.

<sup>8</sup> 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/>.

<sup>9</sup> 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/>.

<sup>10</sup> 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>.

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.<sup>11</sup>

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.<sup>12</sup> 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 accountholders 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.<sup>13</sup> While the average overdraft charge is \$34 on average,<sup>14</sup> because the common overdrafter averages over 10 overdraft fees annually, these individuals pay an average of \$380 in overdraft fees per year.<sup>15</sup>

Beyond multiple fees per year, many banks and credit unions will charge multiple fees per day for a single overdraft episode. Even for banks that have recently capped the number of fees per day, a limit of three to six per day (without changing the amount of the fee) still means that a consumer can incur \$105–\$210 in a single day. These high charges make it difficult for lower-income individuals to weather financial uncertainty and save for future emergencies, thus making them even more susceptible to future overdraft fees.

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.<sup>16</sup> 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.<sup>17</sup> 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

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<sup>11</sup> 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)].

<sup>12</sup> CFPB, DATA POINT: CHECKING ACCOUNT OVERDRAFT (July 2014), [https://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf) [Hereinafter CFPB, *Data Point* (July 2014)].

<sup>13</sup> CRL, *Banks Must Stop Gouging* (June 2020).

<sup>14</sup> *Id.*

<sup>15</sup> CFPB, *Data Point* (July 2014).

<sup>16</sup> FDIC, *HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES* (2019), <https://www.fdic.gov/analysis/household-survey/2019execsum.pdf>.

<sup>17</sup> PEW TRUSTS, *HEAVY OVERDRAFTERS: A FINANCIAL PROFILE* (April 2016), <https://www.pewtrusts.org/-/media/assets/2016/04/heavyoverdrafters.pdf>.

fees like overdraft fees are often cited as a reason for a formerly banked person to no longer have a bank account.<sup>18</sup>

### 3. The “Tip” Model:

We would like to reinforce our previous comments about faux earned wage access (EWA) products, fintech overdraft, cash advance, liquidity products, and other new types of fintech credit that collect “tips.”<sup>19</sup> Although marketed as purportedly voluntary like a tip at the end of a meal, these “tips” are the opposite.

Companies utilize a number of different strategies so that consumers feel compelled to tip or to make it difficult for a consumer to avoid paying the default tip.<sup>20</sup> The vast majority of consumers tip, and the lenders take advantage of the consumer’s lack of understanding of the consequences of not tipping. Tips can add up quickly, costing nearly as much as traditional payday loans in some instances. Their disingenuous nature means tips are inherently deceptive and evasive, using the guise of the “tip” to hide finance charges.

Last year, CFA, along with 78 consumer, housing, civil rights, legal services, faith, community, small business, and financial organizations, urged the CFPB to treat tips as finance charges under TILA and ensure they are compliant with the Military Lending Act (MLA).<sup>21</sup> We also encourage Congress and the CFPB to scrutinize inflated expedite fees, participation fees, and other devices that may be used to hide finance charges and evade TILA and other credit laws. Moreover, even when fintech cash advances are openly offered as credit, they are often simply a fintech payday loan. Should these products be offered without regarding ability to repay, their balloon payment structure and hidden fee structure will lead to a similar cycle of debt and the problem of compounding fees as traditional payday loans.

### 4. 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 can provide a significant benefit for these banks’ customers, these measures are insufficient by themselves to make systemic change.

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<sup>18</sup> Pg. 3, CRL, Banks Must Stop Gouging (June 2020).

<sup>19</sup> See Statement for the Record, Rachel Gittleman, Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products, CONSUMER FEDERATION OF AMERICA (CFA) (November 2021), <https://consumerfed.org/wp-content/uploads/2021/11/CFA-Submits-Statement-for-the-Record-to-U.S.-House-Task-Force-11.2.21.pdf>; Letter, CFA, CRL, NATIONAL CONSUMER LAW CENTER (NCLC), Supervision and Enforcement of Fintech Products and Fee Models That Threaten to Evade Credit, Consumer Protection, and Fair Lending Laws (December 2021), <https://consumerfed.org/wp-content/uploads/2021/12/Letter-Urging-CFPB-to-Examine-Fintech-Credit-Products-and-Fee-Models-12-21-21.pdf> [Hereinafter CFA, CRL, NCLC, Supervision and Enforcement (Dec. 2021).]

<sup>20</sup> Comments to CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION (DFPI), NCLC, CRL, PRO 02-21, Proposed Rulemaking under the California Consumer Financial Protection Law: Earned Wage Access (March 2021), [https://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/payday\\_loans/CRL\\_CA\\_DFPI\\_EWA\\_Comments.pdf](https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CRL_CA_DFPI_EWA_Comments.pdf).

<sup>21</sup> CFA, CRL, NCLC, Supervision and Enforcement (Dec. 2021).

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 Senator Cory Booker's Stop Overdraft Profiteering Act of 2021 (S. 2677).<sup>22</sup>

Key parts of overdraft reform by Congress 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.

Additionally, we ask Congress to urge financial regulators—the Consumer Financial Protection Bureau (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.

CFA and other leading consumer advocacy organizations, in response to the CFPB's request for information on junk fees, urged the CFPB to issue a rulemaking or take other actions on overdraft fees as follows:<sup>23</sup>

- Clarify overdraft coverage is credit and that overdraft fees, beyond 6 fees a year to cover occasional courtesies, are finance charges under Regulation Z;
- Apply CARD Act coverage for debit or ATM card or other access device to access overdraft credit should also trigger the CARD Act;
- Require that overdraft and nonsufficient funds fees be reasonable and proportional to cost; and
- Consider multiple overdraft fees during a single day or overdraft episode an unfair, deceptive, and abusive practice.

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](mailto:rgittleman@consumerfed.org).

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<sup>22</sup> Press Release, Senator Cory Booker (NJ), Booker, Warren Reintroduce Bill to Crack Down on Bank Overdraft Fees (August 9, 2021), <https://www.booker.senate.gov/news/press/booker-warren-reintroduce-bill-to-crack-down-on-bank-overdraft-fees#:~:text=The%20Stop%20Overdraft%20Profiteering%20Act,for%20checks%20and%20recurring%20payments>.

<sup>23</sup> See NCLC, CFA, CRL, AFR, Junk Fee Comments, pg. 22-25 (April 2022).