

142 Consumer, Civil Rights, Legal Services and Community Groups

April 1, 2024

Submitted at Regulations.gov
The Hon. Rohit Chopra, Director
Consumer Financial Protection Bureau
2024 NPRM Overdraft
c/o Legal Division Docket Manager
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB–2024–0002 or RIN 3170–AA42

Dear Director Chopra:

The undersigned 142 consumer, civil rights, legal services and community groups write in strong support of the Consumer Financial Protection Bureau’s (CFPB) proposed rule governing Overdraft Lending: Very Large Financial Institutions. By closing an antiquated loophole designed in the check era, the proposed rule will promote more honest, fair, and affordable forms of overdraft coverage and prevent big banks from charging high, back-end junk fees that push people out of the banking system.

The proposed rule would stop big banks from using junk overdraft fees to exploit families living paycheck to paycheck.

Big banks typically charge \$35 for each overdraft, far in excess of the minimal cost to the financial institution of covering an overdraft. That is a punitive amount, especially since the majority of debit card overdrafts are for less than \$26 and are repaid within three days – translating into an annual percentage rate (APR) of over 16,000%. Almost one in five consumers incur overdraft fees each year, costing them billions annually. These impacts **fall most heavily** on lower-income families and communities of color, as well as **women, LGBTQI+ people, and disabled people**.

Overdraft fees can quickly snowball at families’ most financially vulnerable moments, discouraging people from keeping money in a bank and even causing some to lose their bank accounts. Charging these high fees is not a “courtesy”; it is a form of predatory lending. Overdraft fees exacerbate wealth disparities and racial inequalities. Overdraft fees are a big reason why 11.3% of Black households and 9% of Latino households are unbanked compared to only 2.1% of white households.

The proposed rule would save households that pay overdraft fees at big banks an average of \$150 each year— and much more for some families, especially those with the lowest incomes. People who overdraft frequently, more than 10 times in a year, have an average end-of-day

balance of less than \$350. The savings from the proposed rule and the fairer practices the rule would promote would improve financial stability and financial inclusion.

By eliminating the profit motive to charge overdraft fees, the proposed rule would stop abusive practices that put banks at odds with their customers' financial health, such as charging \$35 fees on small debit card purchases people would rather have declined and engaging in other manipulations to increase fees. Lower fees will help restore trust in banks.

The proposal offers flexibility and promotes honest and affordable overdraft protection.

The proposal would give consumers a range of more affordable options for overdraft protection and provide flexibility to banks.

Banks could continue to provide “courtesy” overdraft services or links to saving accounts, without charging any fee, or at most charging only a modest “benchmark” fee that covers their costs. Consumers would and should still be able to choose whether to have overdrawn ATM and one-time debit card transactions covered.

If big banks want to offer overdraft credit through debit cards and charge more than their costs, they would have to comply with the same protections required of credit cards:

- Transparent APR disclosures and a clear box identifying all fees.
- Assessment of ability to repay so people are not offered debt they cannot afford.
- Periodic statements showing transactions and charges, and time to repay at least 21 days from the statement.
- Flexibility in how to repay, without compulsory repayment by preauthorized electronic fund transfer or repayments grabbed instantly from incoming deposits.
- Limits on fees in the first year that exceed 25% of the credit line, to prevent the credit line from being depleted by fees.

These protections and others would make it easier for consumers to manage their finances and to access overdraft credit when they need it without becoming overextended. These rules have worked well for other credit products and have not stifled a robust subprime credit card market.

The “benchmark” overdraft fee should be \$3.

We urge the CFPB to set the benchmark fee at \$3, not \$14. Indeed, some banks have shown that they can continue to provide overdraft coverage without charging any fees. Rather than deterring overdrafts, high fees increase them by giving banks a profit incentive to push people into overdrafting. High fees also exacerbate the income-expense gap and unpredictability that cause overdrafts and make it harder to bring accounts positive.

Moreover, the average fee should not be based on the outlier costs of a single bank or by excluded fees that are waived. Banks with higher costs can use the “breakeven fee” reflecting their own costs. Struggling families who do not get fees waived should not cover customer service and other costs lost when banks waive overdraft fees for wealthier customers.

The proposal would promote fair competition and preserve low-cost banking options.

Banks that price their accounts transparently, without employing abusive overdraft fee practices, will have an easier time competing with those that hide costs in back-end junk fees. More transparent pricing for overdraft protection and fewer hidden practices will make it easier to comparison shop and keep prices down.

Competition will preserve the option of free checking and other accounts with modest and transparent fees, which are often a better option than “free” accounts with hidden back-end junk fees.

The CFPB should limit the frequency of “courtesy” overdraft fees.

Even smaller fees can pile up, especially if the CFPB authorizes a fee of \$14 or if banks engage in manipulations to increase the number of fees per day. The CFPB should limit high-cost overdraft fees to one a day and six per year. Beyond that, overdraft coverage can be provided through an overdraft line of credit.

Fees should be included in APR disclosure.

APR disclosures cannot promote price transparency and comparison shopping if they exclude junk fees. We hope that big banks will price their overdraft lines of credit honestly with periodic interest rates. But the CFPB should prevent evasions by requiring fees to be included in the advertising APR for overdraft lines of credit and for credit cards and other open-end credit that may be used as a linked source of overdraft protection.

The CFPB appropriately started with the biggest banks, but it should do a subsequent rulemaking to cover smaller institutions.

Most consumers have accounts at big institutions, which charge [over two-thirds of overdraft fees](#). In 2022, Wells Fargo and JP Morgan Chase alone accounted for one-third of reported overdraft revenue. Big banks have made large profits and are well positioned to absorb a reduction in overdraft revenue— many have already done so voluntarily. For example, Capital One, Citi and Ally completely eliminated overdraft and NSF fees, and Bank of America reduced its overdraft revenue by 90%. Big banks also have the resources and technology to easily adjust their product offerings.

We understand that it may take more time for the CFPB to collect the data it needs to propose a similar rule for smaller financial institutions, and it may take those institutions longer to prepare and adjust. We urge the CFPB to collect data and monitor overdraft practices at smaller institutions and plan for future rulemaking.

The CFPB must prevent fintech overdraft loopholes.

The CFPB should stop nonbanks that offer banking apps from evading overdraft fee rules. The best approach is to require compliance with the prepaid accounts rule. Nonbank banking apps

and debit cards target the same vulnerable consumers who were the focus of the prepaid rule and should comply with that rule. The CFPB should also prevent “tips” from being used as a disguised overdraft fee.

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Bank charters are a privilege. Banks receive extensive financial support from the public, and banks should not be allowed to harm families by hiding their costs in back-end junk fees. We strongly support the proposed rule, which will provide consumers with needed financial relief and help to restore trust in big banks.

Thank you for considering our comments.

Sincerely,

National

20/20 Vision

Accountable.US

American Economic Liberties Project

Autistic Self Advocacy Network

Blue Future

Center for Economic Justice

Center for LGBTQ Economic Advancement & Research (CLEAR)

Chief Warrant and Warrant Officers Association of the U.S. Coast Guard

Coalition on Human Needs

Consumer Action

Consumer Federation of America

Consumer Reports

Consumer Watchdog

Consumers for Auto Reliability and Safety

Demand Progress Education Fund

Equal Rights Advocates

Faith in Action National Network

HEAL (Health, Environment, Agriculture, Labor) Food Alliance

Health Care for America Now (HCAN)

Hip Hop Caucus

JustUS Coordinating Council

NAACP

National Action Network

National Association of Consumer Advocates

National Center for Law and Economic Justice

National Coalition for Asian Pacific American Community Development (National CAPACD)

National Community Action Partnership

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low-income clients)

National Consumers League
National Disability Rights Network (NDRN)
National Employment Law Project
National Partnership for Women & Families
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
Public Advocacy for Kids (PAK)
Public Citizen
Public Justice
Revolving Door Project
Small Business Majority
THE ONE LESS FOUNDATION
TURN-The Utility Reform Network
U.S. PIRG
UnidosUS
United Church of Christ
Woodstock Institute
Young Invincibles

Alabama

Alabama Appleseed Center for Law & Justice

Alaska

AK PIRG

Arizona

Center for Economic Integrity

Arkansas

Arkansas Community Organizations
Omni Center for Peace, Justice & Ecology

California

CAMEO
Consumer Federation of California
Elder Law & Advocacy
Housing and Economic Rights Advocates
Mission Asset Fund
National Center for Lesbian Rights
Public Counsel
Public Law Center
Rise Economy (formerly California Reinvestment Coalition)

The Greenlining Institute

Connecticut

Connecticut Legal Services, Inc.

Prof. Annie Harper, Yale Program for Recovery and Community Health*

Delaware

Delaware Community Reinvestment Action Council, Inc.

District of Columbia

Americans for Financial Reform

Better Markets

Jewish Women International

National Association for Latino Community Asset Builders (NALCAB)

Prof. Arthur E. Wilmarth, Jr., George Washington University Law School*

Tzedek DC

Florida

Florida Consumer Action Network

Florida Silver Haired Legislature

Jacksonville Area Legal Aid Inc.

Georgia

Alliance 85

Atlanta Legal Aid Society, Inc.

Georgia Advancing Communities Together, Inc.

Georgia Watch

Hawaii

Maui Economic Opportunity, Inc.

Illinois

Citizen Action/Illinois

Housing Action Illinois

Indiana

Citizens Action Coalition of IN

Fair Housing Center of Central Indiana

Indiana Community Action Poverty Institute

Prosperity Indiana

Iowa

Iowa Citizens for Community Improvement

Kentucky

Kentucky Equal Justice Center

Maine

Coastal Enterprises, Inc.
Maine Center for Economic Policy
Maine People's Alliance

Maryland

Economic Action Maryland
Public Justice Center

Massachusetts

Greater Boston Legal Services
Prof. Kathleen Engel, Suffolk University Law School*
Hilary Flores-Hebert*

Michigan

Community Economic Development Association of Michigan (CEDAM)

Minnesota

Exodus Lending & MN for Fair Lending
Minnesotans for Fair Lending/Exodus Lending

Nebraska

Economic Empowerment Center DBA Lending Link

Nevada

Legal Aid Center of Southern Nevada
Nevada Coalition of Legal Service Providers
Progressive Leadership Alliance of Nevada

New Jersey

Communities First Initiative
Legal Services of New Jersey
New Jersey Appleseed Public Interest Law Center
New Jersey Citizen Action

New Mexico

New Mexico Center on Law and Poverty
New Mexico Fair Lending Coalition
Prosperity Works

New York

Brooklyn Cooperative Federal Credit Union
Community Service Society of New York
Cypress Hills Local Development Corp.
Empire Justice Center
Fifth Avenue Committee
Housing and Family Services of Greater New York
New Economy Project
New York Legal Assistance Group
New Yorkers for Responsible Lending
NYS Community Equity Agenda
Rural Housing Opportunities Corp.
WESPAC Foundation, Inc.

North Carolina

Forward Justice Action Network
North Carolina Council of Churches

Ohio

Ohio Poverty Law Center

Oklahoma

VOICE (Voices Organized in Civic Engagement)

Oregon

CASA of Oregon
Oregon Consumer Justice

Rhode Island

Economic Progress Institute

South Carolina

SC Appleseed Legal Justice Center
South Carolina Appleseed Legal Justice Center

Texas

Habitat for Humanity of Camp County, TX Inc.
RAISE Texas
Texas Appleseed

Virginia

Blue Ridge Legal Services, Inc.
Legal Aid Justice Center
Virginia Citizens Consumer Council
Virginia Organizing
Virginia Poverty Law Center

Washington

Economic Opportunity Institute
Statewide Poverty Action Network (WA)

West Virginia

Mountain State Justice, Inc.
West Virginia Center on Budget and Policy

*Organization listed for identification only