THE END OF OVERDRAFT FEES? EXAMINING THE MOVEMENT TO ELIMINATE THE FEES COSTING CONSUMERS BILLIONS

HYBRID HEARING

BEFORE THE

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AND FINANCIAL INSTITUTIONS

OF THE

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THE END OF OVERDRAFT FEES? EXAMINING THE MOVEMENT TO ELIMINATE THE FEES COSTING CONSUMERS BILLIONS

Thursday, March 31, 2022

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC

The subcommittee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Ed Perlmutter [chairman of the subcommittee] presiding.

Members present: Representatives Perlmutter, Green, Foster, Vargas, Pressley, Torres; Luetkemeyer, Posey, Barr, Williams of Texas, Loudermilk, Budd, Kustoff, Rose, and Timmons.

Ex officio present: Representative Waters.

Also present: Representative Maloney.

Chairman PERLMUTTER. The Subcommittee on Consumer Protection and Financial Institutions will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of the subcommittee are authorized to participate in this hearing.

Today's hearing is entitled, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions."

I now recognize myself for 4 minutes to give an opening statement.

In 1778, William Hog, a merchant in Edinburgh, faced a cash flow problem. His business was doing well, but his customers were often not timely in their payments, meaning his bank account balance would fluctuate and often drop to zero, which made it difficult for him to pay his own suppliers. So he went to his bank, the Royal Bank of Scotland, to work out a deal to help his business. Under the arrangement they came to, Mr. Hog could periodically draw more money from his account than he had in his deposits. In return, the bank would charge him interest on the negative balance. They invented what is known today as an overdraft.

While this overdraft service proved beneficial to both parties in this example of Mr. Hog and the Royal Bank of Scotland, this was not true in all cases, as more banks began offering this product. Some businesses without such sound revenue and business practices found themselves taking on more debt through overdraft than they could repay.

Importantly, this service was created in the context of providing liquidity to businesses with sound revenue but poor cash flow, and today, financial institutions offer overdraft services to both businesses and consumers. Overdraft services have evolved significantly over the past 240 years or so, but the core concept is the same, and many of the fundamental issues we will be discussing today are not new. In fact, we dealt with this very issue about 10 years ago, and every so often, we should address this to see where we are.

However, the current scale and growth of overdraft and non-sufficient funds fees has caught the attention of consumer groups, this committee, and the regulators. In an average year, consumers in the United States pay around $10 billion to $12 billion in overdraft fees and non-sufficient funds fees, and just 9 percent of consumers make up 80 percent of those overdraft fees.

Additionally, these types of fees impact people of color at a disproportionate rate. Studies have found that banks with branches in predominantly Black neighborhoods charge more for overdraft, on average, and Black customers are overrepresented in those who report paying more than $100 in fees in the past year.

In December, the Consumer Financial Protection Bureau (CFPB) published data suggesting that many financial institutions are overly-reliant on the revenue from overdraft fees. However, the market is changing. Recently, many banks and credit unions voluntarily adjusted their overdraft programs to eliminate or reduce fees or to create better consumer protections and more transparency. Additionally, many non-bank fintech companies are also offering products aimed at helping avoid overdraft by improving notifications and information provided to consumers or partnering with depository institutions to offer no- or low-fee accounts directly to consumers.

Another program gaining momentum in recent years is BankOn. This initiative is a partnership between the Cities for Financial Empowerment (CFE) Fund, financial institutions, and local governments, with the goal of providing low-cost, basic bank accounts to unbanked and underbanked households. These accounts do not allow overdraft fees.

We have two bills noticed with today's hearing. First, H.R. 4277, the Overdraft Protection Act of 2021, by Representative Maloney—who has been a champion on these issues—which would strengthen protections and disclosures for consumers with respect to overdraft fees.

And second, we have a discussion draft entitled the, "Expanding Access to Affordable Bank Accounts Act," which would require larger financial institutions to offer at least one bank account option that does not charge consumers overdraft and non-sufficient funds (NSF) fees.

With that, I will yield to the ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for his opening remarks.

Mr. LUETKEMEYER. Thank you, Mr. Chairman, and thank you for having this hearing today on this important topic.

On December 1, 2021, the CFPB issued a press release on overdraft fees entitled, "CFPB Research Shows Banks' Deep Dependence on Overdraft Fees." This press release alludes to exploitative fees being charged by financial institutions for overdraft products, and went so far as to specifically name and shame three financial institutions.

To back up this claim, the CFPB put together two data sets on overdraft and non-sufficient funds fees: one data set is from 2014, 8 years ago, and fails to consider new innovations in overdrafts; and the other data set shows that revenue from overdraft and NSF fees only represented 2 percent of bank revenue in 2019. So, the CFPB's own data would suggest that financial institutions, in fact, are not deeply dependent on overdraft fees.

The truth is that overdraft is a legitimate short-term liquidity product that provides a vital service for consumers. According to a study by a global data intelligence firm, Curinos, consumers make highly-informed choices about when to use overdraft services based on account information and disclosure of the fees and procedures. Even President Biden's Acting Comptroller of the Comptroller, Michael Hsu, acknowledged the importance of overdraft products when he said, "Limiting overdrafts may limit the financial capacity for those who need it most."

The latest actions of the CFPB continue a dangerous trend from my colleagues on the other side of the aisle. At a time when 50 percent of Americans would have difficulty paying a $400 emergency expense, the actions of this committee on financial regulators aimed to reduce consumers' ability to access short-term liquidity financial products. Democrats and the Administration have regulated banks out of small-dollar loans, are opposed to overdrafts, and payday lenders, and have made disparaging comments on innovative products such as, "buy now, pay later," and earned wage access.

So, I ask my colleagues, where are the 40 percent of American consumers supposed to go when they need a $400 loan, or $400 for any kind of emergency? I would be happy to get an answer to that question.

The CFPB did not stop with overdraft fees. On February 2, 2022, the CFPB released a request for information on fees related to other consumer financial products and services, or what the CFPB is calling, "junk fees."

First, let's acknowledge that there is no legal authority for the CFPB to define the term, "junk fee," or any other term for that matter, and there is even less authority to act as a price-setter in the consumer financial market. The CFPB wants information on any fees associated with consumer financial products that seem too high or were unexpected. These are intentionally-vague terms in order for the CFPB to create a subjective measurement that has no bearing on the legality of any consumer financial product or service. Suggesting otherwise would be insinuating that private markets should not be able to set prices for products and services, which is a core principle of our economy. We don't need the government setting prices for everything.

The CFPB has also failed to take into account the lengthy disclosure requirements that consumer financial products already comply with under the Truth in Lending Act (TILA), and fee disclosures promulgated by the CFPB itself. For example, the CFPB specifically lists pre-paid cards as a financial product they want information on, but what the CFPB and Director Chopra fail to mention is that the CFPB issued a rulemaking that was finalized by Director Cordray in 2016 which requires multiple significant disclosures for the pre-paid card industry.

The CFPB is quite literally manufacturing a crisis about hidden fees for financial products when they are the very people who made up the disclosure regime, which shows that this request for information (RFI) is not about fees facing consumers, but is another attempt by the CFPB to denigrate legally-operating businesses by any means possible, and exert as much control as possible over the industry, and thus the economy. It is simply a power grab.

Ranking Member McHenry and I sent a letter to Director Chopra asking him to clarify many aspects of the overdraft and junk fee proposals. I look forward to asking this panel about what role the CFPB should have in the pricing of consumer financial products.

With that, Mr. Chairman, I yield back.

Chairman PERLMUTTER. The gentleman yields back.

The Chair now recognizes the Chair of the full Financial Services Committee, Chairwoman Waters, for 1 minute.

Chairwoman WATERS. Thank you so very much, Chairman Perlmutter.

For far too long, banks have been charging excessive overdraft fees. And, of course, I am very troubled that consumers of color pay twice as much in fees as White consumers. So, I want to commend Representative Carolyn Maloney for her steadfast work in proposing the overdraft reforms we are considering today.

We have also not been shy in conducting megabank oversight, and pressing their CEOs to reduce and eliminate these costly fees, many of whom are beginning to do just that.

With a strong CFPB supporting our efforts by investigating junk fees like these, we now have a growing list of banks that are finally reducing or eliminating overdraft fees.

So, I look forward to hearing from our witnesses on these issues and how we should build on this momentum.

I yield back. Thank you.

Chairman PERLMUTTER. The gentlelady yields back.

Without objection, statements from the following organizations and people will be entered into the record: the American Bankers Association; Chime; Color of Change; the Consumer Bankers Association; the Credit Union National Association (CUNA); the National Association of Federally-Insured Credit Unions (NAFCU); the National Consumer Law Center on behalf of its low-income clients; and Terri Friedline, Ph.D., Associate Professor of Social Work at the University of Michigan.

I am now pleased to welcome each of our witnesses, three of whom are here in person, and two of whom are on video.

Mr. Jeremie Greer is the co-founder and executive director of Liberation in a Generation. Mr. Greer's work has focused on racial and economic justice, and he formerly worked at the Government Accountability Office (GAO), the Local Initiatives Support Corporation (LISC), and Prosperity Now.

Ms. Elyse Crawford-Hicks is a consumer policy counsel at Americans for Financial Reform. Ms. Crawford-Hicks was previously a staff attorney for United Policyholders, and she holds degrees from the Stetson School of Business and Economics at Mercer University, the Charleston School of Law, and Georgia State University.

Mr. Paul Kundert is the president and CEO of UW Credit Union. Mr. Kundert has led UW Credit Union for nearly 19 years, and he formerly served on the board of directors of the Filene Research Institute, a credit union industry think tank focused on issues impacting consumer financial well-being and economic empowerment.

Mr. Santiago Sueiro is a senior policy analyst with UnidosUS. Mr. Sueiro serves as UnidosUS's institutional expert on policy solutions related to reforming banking and lending policies and consumer finance policy.

Finally, Mr. Todd Zywicki is the Foundation Professor of Law with the Antonin Scalia Law School at George Mason University. Mr. Zywicki is also a senior fellow at the Cato Institute, and the former executive director of the George Mason University Law & Economic Center.

I would like to welcome all of our witnesses here today. Thank you for being here. You are reminded that your oral testimony will be limited to 5 minutes. You should be able to see a timer that will indicate how much time you have left, and without objection, your written statements will be made a part of the record.

Mr. Greer, you are now recognized for 5 minutes for your testimony.

STATEMENT OF JEREMIE GREER, CO-FOUNDER/EXECUTIVE DIRECTOR, LIBERATION IN A GENERATION

Mr. GREER. Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, for holding this important hearing and for the opportunity to testify today.

My name is Jeremie Greer, and I am the co-founder and co-executive director of Liberation in a Generation. Liberation in a Generation is a national movement support organization founded to help build the power of people of color to transform the economy.

Financial institutions, large and small, have the ability and authority to unburden their customers from junk fees such as overdraft charges. In the 4th quarter of 2021, commercial banks and savings institutions collected over $72 billion, or 36 percent of their income, from fees. The assessment of these fees has become part of their business model and their profit margin. This burden has disproportionately fallen on consumers who cannot afford to pay these fees. About 9 percent of all consumers account for almost 80 percent of overdraft revenue, and nearly half of all overdrafts are made by parents with children under the age of 18.

In the age of COVID, with record unemployment and historic levels of income volatility, consumers of color who have been hit hardest by the pandemic paid over $4.5 billion in overdraft fees. Black families paid about $8 million in bank fees in 2020, while Latinx families spent $1.1 billion in fees in the same year.

Also, as millions of consumers are bounced out of the financial system following the closure of their accounts due to excessive overdrafts, one-third of households without bank accounts have identified high fees as the reason that they remain unbanked. And the unbanked comprise nearly half of Black households.

These fees operate as an abusive form of high-cost credit and are in no way better than a payday loan. To put it into perspective, the CFPB found that a majority of overdraft fees were incurred on transactions of $24 or less, and were repaid within 3 days, meaning that a $34 overdraft fee would have an annual percentage rate of 17,000 percent—17,000 percent. This is in no way representative of a fair and inclusive financial market.

It is our recommendation that Congress and the Biden Administration act to bring an end to junk fees, such as overdraft and non-sufficient funds fees. We have seen a number of financial institutions already take this critical step. In March, one of the largest banks in the country, Citigroup, announced that it will end overdraft fees for consumers, and in doing so they called it, "a focus on financial inclusion," and I agree. And as Citi made their announcement, Capital One announced that they would eliminate their bank overdraft fees in 2022.

However, without pressure from Congress and the Administration, we are leaving it up to banks to self-regulate, while bringing in huge profits on the backs of predominantly low-wealth customers, largely consumers of color. It is time for Congress to act to relieve this burden.

Mr. Chairman, Mr. Ranking Member, and members of the subcommittee, I appreciate the opportunity to testify and I am happy to answer any questions that you may have.

[The prepared statement of Mr. Greer can be found on page 43 of the appendix.]

Chairman PERLMUTTER. Mr. Greer, thank you for your testimony.

Ms. Crawford-Hicks, you are now recognized for 5 minutes for your testimony.

STATEMENT OF ELYSE CRAWFORD-HICKS, CONSUMER POLICY COUNSEL, AMERICANS FOR FINANCIAL REFORM (AFR)

Ms. CRAWFORD-HICKS. Thank you, and good morning, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee.

As a proud former military spouse of a Specialist in the United States Army, I know firsthand that running a household on military pay can be quite difficult for lower enlisted personnel.

Every month, my husband, who had opted into overdraft protection at one of the top 20 big banks, watched his pay get eaten up by $35 overdraft fees, a cycle that continued paycheck after paycheck until I, a D.C.-licensed attorney who was stationed in California, was able to find employment after jumping through strenuous licensing requirements for the State.

My husband and I are not alone. Overdraft fees are paid the most by the people who can least afford them. These are fees that: one, bear no relationship to the costs banks incur in covering overdrafts; two, have the potential to explode into hundreds of dollars in fees; and three, can be near impossible to avoid for people living paycheck to paycheck.

According to research from the CFPB, overdraft fees have become a cash cow for financial institutions. In 2019, banks and credit unions charged more than $15 billion in overdraft and non-sufficient funds fees, with these fees making up a particularly large portion of smaller banks' net profits. This money is mostly made off the backs of some of America's most financially-vulnerable families, disproportionately affecting communities of color.

Overdraft fees are a penalty for being poor or financially insecure. Nearly 80 percent of overdraft fee revenue to banks comes from 9 percent of bank accounts, and the median account balance for this group is less than $350.

It is extremely challenging for people with low balances to avoid being hit with an overdraft fee. The timing of when debits and credits are posted to a checking account is opaque, complicated, and out of the consumer's control, and in the past, some banks have changed the order of certain transactions so that they debit from largest to smallest to increase the number of overdraft fees triggered.

Overdraft fees should not be used as high-cost forms of credit, and should be eliminated or returned to an occasional courtesy for covering a check or preauthorized electronic payment. Banks should be allowed to impose no more than six overdraft fees a year. Beyond that, they should cover overdrafts through overdraft lines of credit with a reasonable interest rate instead of a huge overdraft fee.

Unexpected and high fees like overdrafts are often cited as a reason for a formerly-banked person to no longer have a bank account. When a bank hits a negative balance with repeated overdraft fees, it can make it impossible for the consumer to recover, so the bank will close the account. When the account is closed, the financial institution submits the customer's name to a database that acts like a blacklist, which can prevent the customer from opening a new account elsewhere for several years.

Among people with checking accounts, Black and Latino Americans are more likely than White Americans to incur overdraft fees. It is wrong that a person who is struggling to get by, gets exploited with a surprise $35 fee just because they inadvertently overdrew their account while buying milk.

Some banks have made significant changes to their overdraft programs, with a small number eliminating all overdraft fees, others getting rid of their non-sufficient funds fees, and some making more modest changes like 24-hour grace periods. While this is positive for these banks' customers, these measures are insufficient by themselves. We need financial regulators to take decisive action to stop abusive overdraft fees at all financial institutions and to prevent them from coming back.

Harmful overdraft practices remain a systemic problem that policymakers should address. Unless fair, legally-binding rules for overdrafts are established, abusive fees will remain. We also need to look out for new fintech forms of overdraft fees, like fees hidden as purportedly voluntary tips.

We urge Representatives to co-sponsor and support Representative Maloney's Overdraft Protection Act, and Senators to support Senator Booker's Stop Overdraft Profiteering Act. These bills would cap the number of overdraft fees at one per month, and six per year, while allowing additional overdrafts to be covered through overdraft lines of credit.

We also urge the CFPB to use its rulemaking authority to end abusive fee practices and to ensure that consumers are safe at every bank and credit union.

We also urge the Federal financial regulators to use their supervision and other authorities to address this problem. And we urge Members of Congress to highlight the importance of the actions taken by these regulators.

Thank you for inviting me to testify, and I will be happy to answer your questions.

[The prepared statement of Ms. Crawford-Hicks can be found on page 40 of the appendix.]

Chairman PERLMUTTER. Thank you, Ms. Crawford-Hicks, for your testimony.

Mr. Kundert, you are now recognized for 5 minutes for your testimony.

STATEMENT OF PAUL KUNDERT, PRESIDENT AND CEO, UNIVERSITY OF WISCONSIN (UW) CREDIT UNION

Mr. KUNDERT. Good morning, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee. Thank you for the opportunity to testify.

My name is Paul Kundert, and I am the president and CEO of the University of Wisconsin Credit Union, and I am testifying today on behalf of my organization.

UW Credit Union is a State-chartered, Federally-insured financial institution. We have assets of $4.8 billion and are among Wisconsin's top 10 financial depositories. We operate primarily in the Madison and Milwaukee communities. We have about 310,000 members, 875 employees, and 29 branch locations.

I have provided written testimony in advance of the hearing, so I will be brief in my comments.

As a not-for-profit credit union, we believe our mission is to improve the financial well-being of our members. This mission led us to first introduce account overdraft services more than 20 years ago, and this same mission led us to be early among financial institutions in re-examining our overdraft program and responding with changes to create a more-equitable banking experience.

In 2001, when we introduced our overdraft program, we viewed it as a way for members to avoid bounced checks. But over the years, we observed an increase in the use of the overdraft program, even though new online tools made it easier for members to keep track of their account balances.

In 2009, when the Federal Reserve published an update to Regulation E, it led us to re-examine our overdraft program. About that time, too, consumer groups were questioning the value of some overdraft programs and raising concerns that the fees most often fell to those who could least afford them.

As a result, we made changes to our overdraft program in 2010, including implementing a de minimis grace zone of $10, setting a limit of one fee per day, and we also affirmed that we would not ask members to opt-in to pay overdraft fees related to debit card transactions. We saw a significant decline in overdraft fee income after these changes. Over the next decade, we introduced additional types of accounts that helped consumers avoid the possibility of overdrafts altogether.

Then, in July 2021, we implemented a reduction in the remaining overdraft fee to just $5. Here is what led us to lower the fee. During 2020, overdraft programs were again frequently the subject of financial industry news stories. We also witnessed social unrest that prompted us to think more deeply about racial equity and to consider business practices from an equity point of view.

Also, we were influenced by research which showed that lower-income households, particularly Black and Latinx households, were more likely to use overdrafts.

We also reviewed our cost again in providing overdraft services. In short, our review led us to believe that a $5 overdraft fee, limited to one per day, would be sustainable for us.

It is important to confirm that none of the changes that we have made have reduced the availability of overdraft funds to our members.

My written testimony includes more details on all of this, so I will just summarize and say that when prices are fair, we believe consumers do benefit from access to the credit provided by overdraft programs.

Thank you for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Kundert can be found on page 47 of the appendix.]

Chairman PERLMUTTER. Thank you, Mr. Kundert, for your testimony.

Mr. Sueiro, if I am making mincemeat of your name, I apologize. Please state your name for the record, and you are now recognized for 5 minutes.

STATEMENT OF SANTIAGO SUEIRO, SENIOR POLICY ANALYST, UNIDOSUS

Mr. SUEIRO. Thank you, Mr. Chairman. Good morning, and thank you for the invitation. I am Santiago Sueiro, senior policy analyst at UnidosUS.

It is okay, people get my name wrong all the time.

UnidosUS, formerly the National Council of La Raza, is the largest Hispanic civil rights and advocacy organization in the United States. For more than 50 years, we have advanced opportunities for Latinos. We also partner with nearly 300 affiliates from Colorado to Missouri, from small towns in Texas and Florida to big cities on our coasts. Our affiliates are local community organizations from across the country that directly serve Latinos.

Latinos are in a precarious moment. The Federal Government's response to the pandemic was critical to reducing poverty and supporting low-income people. But as supports like the Child Tax Credit expire, many are struggling to make ends meet. Recent data shows that over the last 7 days, roughly 63 million people had difficulty covering expenses, and this afflicts 38 percent of Latinos, compared to 23 percent of Whites.

Yet, the work of Latinos is fueling the country's economic recovery. Latinos start businesses at more than double the overall rates and wield significant purchasing power. As such, low-income people must not be burdened with unfair and unnecessary fees. We are encouraged by recent announcements by some banks that they are reducing or eliminating overdraft and non-sufficient funds fees. These actions are, in part, the result of renewed attention from regulators in addition to pressure from consumers in a competitive market.

But because they are voluntary, they could be reversed if conditions change. For this reason, we strongly encourage policymakers to establish permanent guardrails to ensure a competitive and fair marketplace for low-income people, including Latinos.

We have three overarching observations that inform our work on overdraft. First, most people who incur multiple overdraft fees make less than $50,000 a year, and this group is disproportionately comprised of Latinos. Second, high overdraft and non-sufficient funds fees are a barrier to entry for unbanked households. Third, a mix of careful regulations and market-driven solutions can improve access to banking services, resulting in a win-win situation for the industry and consumers.

Overdraft fees, by nature, impact consumers when they can least afford an additional cost. They are also predominantly a fee charged to the lowest-income consumers. Consider that research shows that Black and Latino households are far more likely than White households to overdraw an account, and low- to moderate-income households are nearly twice as likely as higher-income households to overdraw an account.

Overdraft fees have implications for those outside of the financial mainstream. As of 2019, roughly 7 million people were unbanked, and 12 percent of Latinos were unbanked, compared to 2.5 percent of Whites. Cost is a major barrier to obtaining an account. Some 34 percent of those who remain unbanked say they do not have a bank account because of high fees, and 31 percent say fees are too unpredictable.

Two policy change pathways could help make the marketplace more fair and dynamic. First, excessive fees should be limited by regulatory approaches, which could include limits on multiple fees incurred for the same incident, caps on total fees, reasonable grace periods to cure an overdraft, and, for example, the Overdraft Protection Act would limit overdraft fees significantly. The Consumer Financial Protection Bureau is taking an interest with the recent request for information focused on so-called, "junk fees."

Second, we should deepen support for institutions with more-inclusive and affordable bank products. Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs) offer such products, and we know of many credit unions that go to great lengths to include Latinos in their institutions, including offering low-cost products. Congress should therefore consider increasing appropriations funding for the Community Development Financial Institution (CDFI) Fund program, allowing them to grow and serve more low-income consumers.

Yet, the CDFI Fund needs complements to grow the field to meaningful levels. The Advancing Technologies to Support Inclusion Act would invest billions of dollars in CDFIs and MDIs to upgrade their technology capabilities, which would significantly improve their ability to compete with banks that offer fintech products.

Finally, policymakers should incentivize banks to sign on to Bank On national account standards, and banks should promote these no-overdraft, low-cost accounts in underserved communities.

Some of our financial institution friends said there should be a race-to-the-top business strategy as the path forward for the banking sector. We agree with the sentiment that investing in low-income people by providing affordable and high-quality products will allow communities and banks to grow together.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Sueiro can be found on page 52 of the appendix.]

Chairman PERLMUTTER. Thank you, Mr. Sueiro. I appreciate your testimony.

Mr. Zywicki, you are now recognized for 5 minutes for your testimony.

STATEMENT OF TODD ZYWICKI, GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, ANTONIN SCALIA LAW SCHOOL, GEORGE MASON UNIVERSITY

Mr. ZYWICKI. Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee. I understand consumers are frustrated by overdraft fees, and other bank fees. Financial products for consumers today are extremely complex for various reasons, and have a lot of price points. But the point I hope you will take away from today is that exasperation is not a substitute for sound economic analysis, and I think this is an area in which unintended consequences of bans on overdraft protections—substantive limits, price controls and the like—could have some serious unintended consequences.

I am going to talk about unintended consequences briefly on three groups: first, those who use overdraft protection; second, banks, and in particular small banks; and third, all other consumers who don't use overdraft protection, and particularly lower-income consumers, who I think would be most adversely affected by unwise or extreme new limits on overdraft protection.

First, who are these people who use overdraft protection? I have detailed this in my written testimony, but I will just give a brief overview here, which is, first, these are individuals who have limited access to credit generally. The CFPB did a study in 2017 which confirmed what had been previously found, which is that the primary predictor of whether somebody frequently overdrafts their account is their credit score, and that people with low credit scores use overdraft more frequently. It is not correlated with income and other demographic characteristics.

There are a lot of low-income households in this country who manage their financial affairs just fine, and never overdraft their account, and I think that is important to keep in mind.

People who use overdraft a lot are also people who do not have access to credit cards, and if they do have access to credit cards, they have much less credit access on their credit cards. So, most consumers use credit cards for short-term expenses, but they cannot.

The second thing to know about these people is that heavy overdraft protection users use it for what could be called necessities. Michael Flores and I did research where we looked at Merchant Category Classification (MCC) codes, and we found that overwhelmingly, the places where people overdraft are grocery stores, gasoline pumps, and the like. Other studies have found it is for things like utilities, rent, mortgage, groceries, and the like.

The third thing is that, as I mentioned, there seems to be very little correlation between heavy overdraft usage and income. In fact, what we find is that higher-income households, as measured by households that make a lot of deposits each month, are actually more likely to be the households that overdraft. What we see is that what causes overdraft, it appears, are households that have high income and high deposits, but also just a lot of deposit activity on their account. They have a lot more debit card transactions and the like, and lower average balances. So, we are talking about people who just have a lot of income volatility, but they do not appear to be lower income. They tend to be higher income, or at least higher on deposits.

The fourth thing we know about people who use overdraft protection a lot is that they monitor their accounts a lot more closely. They understand that they are skating near the edge, and when they overdraft, they typically understand that they either are hoping that it will work out and a deposit will hit before a withdrawal, or they know it will not. They check their accounts regularly. They are much more active in checking their accounts.

The second group this hits are small banks. Banks, as we have heard, generate a lot of revenue from this. But what we have found—and I can elaborate on this question if you would like—is that small banks tend to be more dependent on overdraft fees than large banks. Why? Because large, megabanks have multiple lines of revenue, wealth advising services, insurance, all these sorts of things. Small banks will have a much more difficult time diversifying if they lose this stream of revenue.

The third thing, and the one I want to close on, is to talk about the impact on other consumers, consumers who don't use overdraft protection, which is if we get rid of overdraft protection and banks move to pick up revenues somewhere else, what are we going to see? We will see higher bank fees, we will see higher minimum monthly deposits as basically insurance against overdrafting, and we will see a loss of access to free checking, and this will impact low-income households the most. A paper by Evans found that when the Fed changed its rules on opting into overdraft protection, the percentage of free bank accounts fell 11 percentage points in one year, which impacts low-income consumers.

We also have the study by Federal Reserve Economists Brian Melzer and Donald Morgan that I would refer you to, where they found that when overdraft fees were essentially deregulated, there was a decrease in returned check fees and an increase in bank accounts by low-income households.

So, thank you for your time, and I look forward to answering your questions.

[The prepared statement of Mr. Zywicki can be found on page 59 of the appendix.]

Chairman PERLMUTTER. Mr. Zywicki, thank you for your testimony.

The Chair will now recognize the Chair of the full Financial Services Committee, Chairwoman Waters, for 5 minutes for her questions.

Chairwoman WATERS. Thank you very much, Mr. Perlmutter.

I would like to address this question to Mr. Greer.

Mr. Greer, in his written testimony, states that elite institutions use racism and discrimination as a tool to expand their power and wealth, all while suppressing the economic power of communities of color and other marginalized groups. These elite institutions that control resources use that control to change the rules of our economy in their favor, which continues the cycle of profit.

You describe your work as basically liberation from the oppression economy. Many of the large banks have announced changes to their overdraft programs. However, these programs do not all eliminate the use of overdraft fees and provide different features. For instance, some large banks are now offering new small-dollar loan products to their customers as part of the changes.

What are the most important considerations when evaluating and comparing these different programs that the banks are now offering in lieu of more traditional high-cost overdraft fees?

Mr. GREER. Thank you, Madam Chairwoman, for that question. It is so important. The perspective that you laid out is precisely the assessment of the economy that we have. I think there is a long history of the financial institutions in this country oppressing people of color, whether that is in the mortgage market, whether it is in retail banking, so on and so forth, and we still see it today. We see examples of it today in the news, it feels like almost monthly or weekly.

What I think is the most important thing to consider is as financial institutions [inaudible], is recognizing and understanding that they are navigating a very turbulent economy, especially now in the time of COVID, more income volatility, more volatility around the hours that they are able to work, being pushed into the gig economy, and structuring products and services to meet those needs for folks are things to consider.

One thing that I will raise, and that Ms. Crawford-Hicks raised in her testimony, is access to affordable credit, and I would say access to affordable credit that is not predatory but that will actually help people manage their finances and actually build wealth, because what we know historically is that these fees have become a substitute for folks who cannot access affordable credit in financial institutions because of discrimination in the credit markets.

So, what I would say is we can't look at these things in a vacuum. It is very easy to say, well, if we do this, then this will happen, or if we do this, then this. We have to look at the whole picture and know that the financial institutions have a responsibility to meet the full needs of communities that they serve.

Chairwoman WATERS. And do you believe that because of these practices, the wealth gap can never be closed, in fact, if these kinds of practices continue?

Mr. GREER. Absolutely, because what these fees are doing is they are extracting resources out of the households of communities of color that otherwise could be used to save money, to put money down on a mortgage, on a house, to put money down on a small business, to participate in the economy in a way that builds wealth, but they are not able to do that because fees like these and other things that financial institutions do, that this committee and others have covered over time, are just pulling and extracting and siphoning resources out of communities that could be used to build wealth.

Chairwoman WATERS. The amount of money that you indicated that has been paid by Black and Latino communities is absolutely extraordinary. Do you stand by that?

Mr. GREER. It is what we found in the research in preparing for this hearing.

Chairwoman WATERS. I think about $40 billion, you indicated in one instance here, with the Black community?

Mr. GREER. It was $800 million, and $1.1 billion in bank fees in 2020.

Chairwoman WATERS. Thank you very much.

Mr. Chairman, I yield back.

Chairman PERLMUTTER. The gentlelady yields back.

I now recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes for his questions.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Professor Zywicki, as someone who served as the Chair of the CFPB's Task Force on Consumer Financial Law, do you think the CFPB has the legal authority to set the prices for consumer financial products?

Mr. ZYWICKI. I don't think they have the legal authority to set the prices on financial products. And as we know, the Dodd-Frank Act specifically says they cannot impose usury ceilings, but I think that would be a general rule in terms of dictating prices for financial services.

Mr. LUETKEMEYER. So, why are they getting involved in this?

Mr. ZYWICKI. They have this theory of junk fees, and I assume the theory must be something like, these are unfair, deceptive, or abusive practices. It is not quite clear what their authority is for it, but basically what we have had so far is rhetoric.

Mr. LUETKEMEYER. It is very concerning to me when you have an agency like that basically create a new word. I have been around for almost 50 years. I have never heard the words, "junk fees." It is not in any financial services dictionary anywhere. They created this word, and basically, what I think you just said is they are trying to insinuate that there is some sort of exploitative activity going on here, rather than acknowledging that service charges are basically something that is charged for a service that has been requested by the customer, for which they pay a fee. They don't pay fees if they don't access the service, right?

Mr. ZYWICKI. That is right. All of these fees are generated by something people do. But the more general point, I think, Congressman Luetkemeyer, is a sound one, which is, what is a junk fee versus a risk-based fee, for example? If I go off to Europe and incur a foreign transaction fee, should some poor guy in rural Nebraska be forced to subsidize my foreign transaction fee? If I overdraw my account, why should somebody else have to pay for my overdrafts? If I pay my credit card late, why all of a sudden is that a junk fee rather than something that prices my risk and prevents other people from having to subsidize my behavior? So, I think the junk fees rhetoric covers a lot of serious economic questions.

Mr. LUETKEMEYER. Over the last several months here, it has really been concerning to me to see the activities of the CFPB and the way they are going about their business. For instance, they set up this strawman issue. The other day, they talked about illegal repossessions, which is quite a—they created a whole situation that doesn't exist, and say they have to regulate that. They create service fees for financial institutions as junk fees, so therefore we have to regulate that. There is nothing there, and yet they try and create something so they can make an excuse to regulate it, when you just said they don't have the authority to do that. It is very concerning, by the way, how they are going about their business, how they are exploiting their lack of oversight to be able to go about doing this. It is very, very concerning.

I am just curious, if there is no overdraft situation, what happens to people if they can't have access to overdraft services? What are they going to do when they have—40 percent of people can't pay a $400 bill, and you wind up having to go buy a new set of tires, and it costs $500?

Mr. ZYWICKI. That is right. Basically, they will either have their payments declined, in which case they won't be able to buy the goods or services they need—as I said, overwhelmingly, it looks like people use overdraft for things like groceries, utility bills, and the like.

The second thing they can do is try to go somewhere else. For a lot of consumers, as we have already said, they don't have access to credit cards, and what a lot of heavy users of overdraft have said is that their next-best alternative is a payday loan. So, they go without, or they have to go down the street and get a payday loan in order to buy the tires, and it is not clear to me how that makes them better off.

Mr. LUETKEMEYER. You made a comment a minute ago that if they don't charge a fee for this, the rest of the customers who patronize that particular business are going to have to pay for that person's ability to have a free loan through higher service fees that they pay. Would that be a fair statement?

Mr. ZYWICKI. That is basic Economics 101.

Mr. LUETKEMEYER. Because at the end of the day, there is a certain amount of expense the business has if they have to cover with their charges for their business operations, whatever their business model is, that includes some fees to be able to pay for the people who work for them to be able to do that. To me, it is a simple way of operating. It is a business model that has been there for years. There is nothing exploitative about it if you understand how it operates. I was in a business for a long, long time and I can tell you, people call up and say, I wrote a check today, I will be in next week to pick it up, please pay my check so I don't have an overdraft fee or don't have a bad check fee and I can do business; they are willing to pay the fee to be able to transact that piece of business.

With that, thank you, Mr. Zywicki, for your testimony today.

Mr. Chairman, I yield back.

Mr. ZYWICKI. Thank you.

Chairman PERLMUTTER. I thank the gentleman.

Now, I am going to recognize myself for 5 minutes.

In this subcommittee, I have said to people from time to time that I think we have two responsibilities: consumer protection; and financial institutions. One of them is to weed out and stop sharp practices. I would say that is something that as a bankruptcy lawyer, I heard a lot about. Bankers and bankruptcy lawyers, we heard about sharp practices that take advantage of everyday Americans and put them behind the eight ball, where they really have trouble exiting. The other is to make sure that the financial institution remains solvent and strong, and those are not incompatible. Those things work together.

So, I am going to start with you, Mr. Kundert, if I may. I want to ask you about some of the consumer protections your credit union has implemented to your overdraft product.

Beginning back in 2010, the University of Wisconsin, (UW) Credit Union implemented a de minimis overdraft buffer, published a plain-language description of the product, and made other changes to make the product more consumer-friendly. As you mentioned, you also recently cut your overdraft fee from $30 to $5. Many of these steps your credit union has taken are emblematic of the changes many of my colleagues and I would like to see in the market overall. I think a lot of other financial institutions are taking a close look at their overdraft programs, and hopefully we will see continuing improvements in this area.

What has been the most challenging part of improving your overdraft program?

Mr. KUNDERT. Thank you, Mr. Chairman. The most challenging part is adapting to not having the revenue that the programs previously provided us. The revenue from overdraft programs, especially those that include debit card transactions, can be pretty significant to a financial institution. So, we voluntarily made these changes and made them, as you mentioned, starting 10 years ago, so we have had time to adapt our organization to not depend on that overdraft income.

I think operationally, it hasn't been as difficult to implement changes as it is just to adjust the business model where that revenue isn't a part of it.

Chairman PERLMUTTER. How have your customers reacted to the changes that you have made over this period?

Mr. KUNDERT. Honestly, they have responded quite quietly. We didn't have a lot of complaints about practices before 2010, or even since. Obviously, people have benefited from the more affordable cost of the program, and that has been a positive. We enjoy very high member satisfaction levels overall. But over the years. we have received very little feedback one way or the other on these programs. But we believe in principled decisions and don't necessarily make them based on public outcry or complaints.

Chairman PERLMUTTER. You said these provide a significant revenue stream. I heard Mr. Greer at the beginning of his testimony talk about the $34 charge paid back in 3 days on a cup of coffee or whatever it is, at a 17,000 annual percentage rate (APR).

So, Mr. Greer, do you think these revenues that people get stuck in, is it a revenue stream that the banks are becoming dependent upon, I guess is what I would ask you? Or a bank, any banks?

Mr. GREER. Yes. "Dependent upon," I think is—I think it is quite clear that it is a significant portion of their revenue that is coming in. Now, dependency on that revenue to me doesn't justify the extraction that it is taking from households, particularly households of color. Members of Congress have to understand the tradeoffs of that. The financial instability in the households that these fees are causing households to me wouldn't be commensurate with the adjustments that financial institutions would have to make in order to forego some of the revenue that they would lose by eliminating these fees.

Again, I think the tradeoff for families is they are much less able to stomach the impact of these fees than the bank would be for cushioning the impact of the loss of revenue.

Chairman PERLMUTTER. Thank you.

My time is about to expire, so I will yield back, and recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you very much, Chairman Perlmutter.

Professor Zywicki, is there any way to be charged an overdraft fee if you don't write bad checks?

Mr. ZYWICKI. Not that I am aware of.

Mr. POSEY. If there was no fee to cover bad checks, who would have the burden of making up lost revenue and administrative costs?

Mr. ZYWICKI. That is a great point, Congressman Posey. You have to keep in mind that the overwhelming majority of Americans never or rarely overdraft their account. So, most people don't do this. But if we have a situation in which people are writing bad checks that have to be cashed off or payments that are made that have to be cashed off, an overdraft line of credit might be $300, $400, $500, and if people don't have to pay for that and that ends up getting written off, somebody else has to bear that cost, which means that other 80 percent of households presumably who aren't really using overdraft very often.

Mr. POSEY. When we are talking about the title of this hearing, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions," if we do that, we shift the burden of responsibility from people who write bad checks to the backs of people who don't write bad checks, correct?

Mr. ZYWICKI. That is right, the rest of us have to pay for it. And what really bothers me about it, what I am most concerned about, Congressman Posey, is the impact this would have on all consumers, which is to say one way of keeping people from writing bad checks is, for example, requiring them to hold higher minimum balances in their accounts so the payments are more likely to clear. Who is that going to hurt? That is going to hurt low-income consumers. You could charge bank fees for everybody, monthly fees, in order to provide this, "free," service. Who is that going to affect?

It most likely will affect low-income consumers because they are not going to be able to get the minimum balances necessary to maintain free checking and the like.

So, there is no free lunch here. There is no free lunch, unfortunately, for when you overdraw your account. Somebody has to pay for it.

Mr. POSEY. Historically, we only subsidize things that we want to encourage, and I wouldn't think we would want to encourage writing bad checks, but it is almost comical when you stop and think about it, that the management of an organization that is $30 trillion in debt, with no plan whatsoever to ever repay that money, just continue to pay interest and burden future generations, is trying to tell banks and credit unions and other lenders how they should run their business. That almost doesn't pass the straight-face test. I have a real problem with that.

Would it be reasonable and beneficial for banks to characterize overdraft fees to become a short-term line of credit with transparent limits on the amount of available credit and the prices of that credit?

Mr. ZYWICKI. What I think would be a useful way, a more productive way to think about this, Congressman Posey, and I feel very strongly about this, and we talked about this in our CFPB task force report—I think the answer to this is more competition, which is it is regrettable that if you can't get an overdraft transaction, you have to go get a payday loan. I think the answer is to open up things like fintech, greater chartering of credit unions, more access to different sorts of banks, like Walmart being given a banking charter. I think that earned wage access, as we talked about, direct deposit advance.

And I also think a very important thing that was mentioned in some of the background materials is it is time for the Fed to get its act together on faster payments. Somebody needs to get this faster payments problem solved. The rest of the world knows how to do faster payments. Why can't we do faster payments so that it takes 3 or 4 days for your paycheck to clear in a bank? I don't know whether it is the Fed or whether it is the clearinghouse or somebody, but there are a lot of things that could be done to promote competition and promote access, I think, without going down this path of banning products, price controls, and things that are going to have terrible unintended consequences for people.

Mr. POSEY. Thank you.

My time is about to expire, so I yield back, Mr. Chairman.

Chairman PERLMUTTER. The gentleman yields back.

The Chair now recognizes the gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations. You are now recognized for 5 minutes for your questions.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Chairman, I am grateful for this hearing, and I especially want to thank you and the Chair of the Full Committee. I am just amazed at how this hearing has unearthed facts that are so disturbing.

And I want to mention this: the Chair of the Full Committee, if I may, the Honorable Maxine Waters, when it comes to housing the homeless and consumer protection, nobody is in front of her in that line of persons who desire to do so. So, I am grateful to you, Madam Chairwoman. It is an honor to serve under your leadership.

With reference to the comment about no free lunch, let's talk to Mr. Kundert. You have been without these overdraft fees for some time now. Are you at risk of going out of business?

Mr. KUNDERT. No. I am happy to report that we are doing very well.

Mr. GREEN. How do you respond to a comment about no free lunch when it comes to doing something that obviously benefits your clientele?

Mr. KUNDERT. We did not eliminate the overdraft fee entirely. Our action was to change the likelihood that it would be imposed, make sure it wouldn't be imposed more than once a day, and to study our actual costs to make sure the fee we were charging was proportional and appropriate for the service we were providing.

We do provide our accountholders between $200 and $600 of liquidity through these programs, so to be sustainable, we believed that we needed to charge something. It wasn't possible for us, or wise I should say, we didn't think, to charge nothing for the fee, because we think there should be a greater cost to receiving an advance from the credit union than not receiving one, and I think that goes to some of the comments that have been made about fairness to all of the members that we serve.

But we are not serving all our members well, we think, to disproportionately profit from one segment of our membership simply to benefit another. We do think that we need to be diligent in monitoring the levels of income that we receive from the various products we have.

Mr. GREEN. I am grateful that you have given it some consideration, to be very candid with you. I have one more question for you and then I will have to move on. In doing this, how much less are you charging the persons that you are referencing? What was the fee initially, and what is it now?

Mr. KUNDERT. We made substantial changes to the likelihood you would incur a fee, and no more than one, 10 years ago. But last year we reduced the fee from $30 to $5. We were comfortable with $30 in 2010 because it was, at the time, sort of considered the competitive market rate for an overdraft. Our focus was to make sure you wouldn't incur that from a debit card transaction. It would be purely from a check transaction or an ACH debit. But last year, we reduced the fee after more examination of the program.

Mr. GREEN. And you are maintaining your business model and doing well?

Mr. KUNDERT. We are. Thank you.

Mr. GREEN. Thank you.

Mr. Greer, let me go to you rather quickly. You indicated that the people who incurred these fees usually would have $24 or less in their overdraft, and that it would be repaid in about 3 days. I think you said that the interest rate annually would compute to about 17,000 percent. Correct my mistake, because I think this is great information for me for future reference.

Mr. GREER. No, that is correct, Congressman.

Mr. GREEN. And $24 or less. What would the typical amount of the overdraft fee be for this $24 or less?

Mr. GREER. Anywhere underneath that $24. So, you are talking about routine kinds of purchases at the grocery store, for example, a carton of milk.

Mr. GREEN. I guess what I am asking is, what was the fee that the bank would charge for that?

Mr. GREER. They would charge $34 on, say, a $5 overdraft.

Mr. GREEN. Thirty-four dollars on a $5 overdraft.

Mr. GREER. Yes.

Mr. GREEN. Okay.

I thank you, Mr. Chairman, and I yield back.

Chairman PERLMUTTER. The gentleman yields back.

The Chair now recognizes the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman, and thanks to our witnesses for their testimony today.

As the discussion has progressed, I notice a theme continues to come up, and that is the benefit of short-term liquidity for consumers provided by these overdraft-eligible accounts.

Ahead of this hearing, I asked many of my constituents, Kentuckians, for some anecdotes about their experiences with bank accounts and overdraft fees, and I got a whole lot of feedback, and one of them I just have to share.

They were a couple of brothers, and they were horse traders; Kentucky is synonymous with horses. And these guys would buy Western performance horses for cutting and rating, and they bought them for about $3,000, and they sold them for $5,000. They had short-term liquidity needs, and they sometimes paid the bank $1,000 in overdraft fees and negative balance fees.

But they wanted to do it. They knew that they were going to have to do it. They didn't qualify for a line of credit, so they wanted to do this because they had no problem paying a $30 overdraft fee to buy a horse on which they would then make $2,000. They knew about this product, they liked the product, and the bank had a problem with it, not because the bank didn't believe that these folks were going to pay them back, but because the regulators had a problem with it. That is why the bank had a problem with the overdraft.

Another great story from a Kentuckian. It is one thing to speak about these fees in the abstract, but it is a totally different thing to hear about what happens in reality, and to hear it directly. A young mother, her husband was deployed in the Army, and her car broke down. She had no way to pay for the car repair, but forgot that she didn't have sufficient funds in her checking account. The overdraft protection on that account allowed her to address her emergency, and she relayed that the fee she paid was worth the convenience in the circumstance. And I have heard many other stories similar to this one.

Professor Zywicki, in a circumstance like the one I just described, what options would be available to that young mother whose husband was deployed overseas? What alternatives would she have if accounts with overdraft protection were banned? What would be the alternative for her as she faced that short-term, cash-strapped need?

Mr. ZYWICKI. What we know is that if you asked most people, including people in this room, they would just use a credit card, right? That is what credit cards are for. But people who use overdraft say, “We don’t have credit cards.”

I think we need to understand that according to the CFPB, people who overdraft their accounts frequently have a credit score of 563, which is deep sub-prime. So when we are talking about overdrafting, extending $300 or $500 of credit to someone, these are accounts that go bad. They are overdraft accounts that go bad, which is why you charge a fee on them, and these are people who are not going to get a credit card.

So for this young woman, presumably, if she had a credit card, she would have used it. She didn’t, and so her alternative is probably a payday loan, which is the best she is going to do at that point, or going without.

Mr. BARR. And to that point, this woman saw her banker at a grocery store and went up and thanked the banker for the convenience that overdraft protection provided.

Professor Zywicki, can you describe the requirements for banks under Regulation E with respect to overdraft fees and the transparency and protections that those rules already provide to customers?

Mr. ZYWICKI. There are already a lot of disclosures that are required. With respect to point-of-sale and ATM overdraft fees, we know they changed the rules so it is opt in, so consumers actually have to opt into that. And unsurprisingly, what we see is that consumers who use overdraft protection a lot are a lot more likely to opt in when that was passed because they have the greatest need for the product.

Mr. BARR. In my final minute, I want to focus on another point that you made, about the ability of community banks, small banks, to handle overregulation of overdraft versus large banks. It is wonderful that we heard from one of our witnesses, Mr. Kundert, about his institution’s ability to reduce those fees, and that is the great thing about a competitive marketplace. And presumably because of that move, maybe his institution is able to attract more customers. That is his choice, and that is what the free market and competition does.

But can you compare the relative ability of large banks and small banks to absorb the costs of overdraft protection if fees are further curtailed or prohibited?

Mr. ZYWICKI. Yes. I think it is great that banks are innovating on this, they are competing. If large banks want to be more generous on overdrafts, that is great. Let a thousand flowers bloom. But the reality is that larger banks have a lot more places from which they can generate fees. Small banks have continued to be able to be competitive because they offer no-annual-fee bank accounts. Large banks have generally moved away from that.

Chairman PERLMUTTER. Mr. Zywicki, his time has expired. Thank you.

With your anecdotes, Mr. Barr, you reminded me that my daughters find that their cup of coffee at Starbucks has overdrawn them by $2, and they get charged $35 on their overdraft. So, they are all over the map on this thing.

I now recognize the gentleman from California, Mr. Vargas, for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman. I appreciate this hearing very much, and I want to also thank Ranking Member Luetkemeyer.

Dr. Zywicki, you have said a few things here today that to me sound very counterintuitive, so I want to make sure that I understood what you said and give you an opportunity to clarify them for me if I am incorrect.

You said this: Who are the people that use overdraft? You said it is not correlated to poverty. Higher-income families use overdraft more than lower-income families, and they use it for groceries and utilities.

That sounds very counterintuitive to me. I don't believe we ever used overdraft, an upper middle-class family. I think you also said the great majority of Americans never use overdraft. That seems to me, to be completely counterintuitive. Could you explain that to me?

Mr. ZYWICKI. Sure, I would be happy to. For example, on the question about income, if you look at the CFPB's 2017 report on frequent overdrafters, what we find is that when you look at monthly deposits, very-frequent overdrafters who overdraft more than 20 times a year have monthly deposits of $2,554. People who infrequently overdraft, one to three times a month, have $1,726 per month, so $800 more per month, and it goes down from the high of $20 to $10 and down. It goes from $2,500 down to $1,700 linearly.

What we also see is that people in that category have very low credit scores, very low credit available on their credit cards, and much higher levels of point-of-sale debit card transactions, twice as many as the people who have lower income and overdraft less frequently.

What seems to be driving overdraft protection for a lot of these people is they simply have a lot of money flowing through their accounts and things get out of whack, right? So it would not be, unfortunately, surprising if their—

Mr. VARGAS. Dr. Zywicki, I am going to interrupt you for a second, because there was testimony that other people have spoken of, about people of color especially overdrafting. It doesn't seem to jibe with what you are saying at all, just to be frank. This seems to me a little bit like the old lawyers who got up there for the tobacco companies and said no, no, tobacco, there is no health problem here.

Would someone else like to answer these questions to refute or contest what Dr. Zywicki has said, any of the other witnesses?

Mr. SUEIRO. Sure. This is Santiago with Unidos. I believe in the same report we have been looking at, that 9 percent of consumers account for 80 percent of all overdraft fees. In that report, if you look at the 9 percent of consumers, 7 out of 10 of them earn less than $50,000 per year. So if you are looking at it in terms of income, a majority of them are relatively lower income, rather than looking at it in terms of deposit amounts.

Mr. VARGAS. It seems ridiculous to me to believe that it is mostly wealthy families who overdraft. Maybe it is not, but it seems ridiculous to me, especially when you see so many people of color, who are normally not wealthy, paying so much in overdraft fees.

Would anyone else who would like to comment on that?

Ms. CRAWFORD-HICKS. This is Elyse Crawford-Hicks from Americans for Financial Reform. I particularly agree that it does sound ridiculous that high-income families are using overdraft protection when low-income families do not own a lot of the wealth in this country. So quite naturally, the 9 percent of accounts that hold $350 or less, that are using overdraft protection the most, do seem to belong to the low-income people in the country.

Mr. VARGAS. That seems obvious to me. But it could be right, I don't know. I think more should be done on that because it sounds ridiculous, that the wealthy families are the ones that pay the overdraft and the poor do not, that it doesn't correlate to poverty. That sounds utterly ridiculous. It sounds like that old commercial for the tobacco companies.

But again, my time has run out. I appreciate this hearing very much. Thank you.

Chairman PERLMUTTER. The gentleman's time has expired.

The gentleman from Texas, Mr. Williams, is now recognized for 5 minutes for his questions.

Mr. WILLIAMS OF TEXAS. Thank you, Mr. Chairman.

Mr. Zywicki, do you want to quickly respond to any of those accusations?

Mr. ZYWICKI. Sure. This is CFPB data. This is a CFPB study. Michael Flores did a study that found the same thing. People with high overdraft—and again, most households don't overdraft or overdraft rarely, right? We are talking about high overdrafters. The CFPB, and Michael Flores' study, found the same thing, which is that what correlates with people is that they have high deposits, high transactions, and low average balances.

Mr. WILLIAMS OF TEXAS. We know the CFPB is always right, so thank you for that.

Mr. ZYWICKI. Compared to the cigarette industry.

Mr. WILLIAMS OF TEXAS. It is funny that we are having this hearing highlighting a phenomenon that the private sector—and I am a private sector guy, I am a small business owner—is already taking care of. There is a thing called competition that a lot of people don't understand, but it drives the financial industry to lower or get rid of overdraft fees entirely. Customers tell people what to do, tell businesses what to do. This is not happening because of government mandates but businesses who are competing for customers.

It started with some fintech companies like Chime, who got rid of these fees almost 5 years ago, and a few years later, more traditional banks like Ally changed their overdraft policy, in their opinion to better serve their customers. And most importantly, one of the largest banks in the country, Citibank, got rid of these fees as well.

So, the market is taking care of the issue without government intervention, and we do not need more rules from Washington mandating that the entire industry move in this direction, because

I know when I opened up my first checking account, I agreed to write checks and have money in the bank before the check cleared. Pretty simple.

So, Professor Zywicki, in what ways do you think banks would recoup some of their lost revenues if overdraft fees were suddenly banned across-the-board?

Mr. ZYWICKI. Let me again emphasize that I think it is great that there are different models of competition. Credit unions obviously are member organizations. They can have a different model from a bank that is kind of open to all comers.

But I think what we would probably see is a reduction of free checking, and we would see higher required monthly minimum balances. This is what the research found, that there were restrictions. And we would see higher bank fees, like higher monthly fees.

Mr. WILLIAMS OF TEXAS. So if we legislate away overdraft fees, some private sector participants will simply block these transactions from going through at the time of the sale, and this will leave consumers—again, the very people we want to help, whom we sometimes end up hurting—with fewer options, and they are left in a pinch and do not have sufficient funds in their account.

We saw after Dodd-Frank, when the government came in with a heavy-handed regulatory approach, debit card rewards and free checking accounts suddenly left the market. These are tradeoffs to all of these policies we enact in this committee, and we should not look at outright bans on certain products that provide a necessary service to customers.

In Texas, we have a saying that a deal is a deal. Professor Zywicki, what are some ways we could expand consumers' options in the small-dollar credit space instead of this blanket big-government ban?

Mr. ZYWICKI. I think that is the best way to think about this, Congressman Williams, that first, I think the Durbin Amendment example is a very bright cautionary tale of how this happens. So, I would advise you to look at that.

But as I mentioned, I think things like fintech, I think greater chartering of industrial loan banks such as Walmart potentially getting in, earned wage access, direct deposit advance products, all these sorts of things—more competition is the answer for these consumers, more choice, rather than putting them in this bucket where they have to either get an overdraft or a payday loan, which is a terrible situation to be in, which is where a lot of these people find themselves because there aren't enough alternatives.

Mr. WILLIAMS OF TEXAS. Main Street America has been hammered, and I am Main Street America. I am in the car business. Main Street has been hammered with new regulations during President Biden's first year in office, and one study estimated the true cost to be around $202 billion of regulations, and 130 million manhours to deal with these regulations, and it is a cost that forces businesses to hire compliance people rather than salespeople to comply with these government mandates.

This means businesses are forced to hire more compliance officers who will be nothing but a drag on a company's bottom line because they generate nothing. I am in a business that is totally commission. If you don't sell something, you don't eat. And to hire a compliance officer, does nothing for me; it does not help.

So quickly, I know you have studied this topic extensively, so can you give us your view of regulatory optimization? What is regulatory optimization?

Mr. ZYWICKI. That is a great point, which is this is one of the big reasons why this hits small banks so heavily, which is every time you enter a new business, a new line of revenue, you also have new compliance costs that go along with it. So if you are going to start selling insurance or something, for small banks, this is very difficult.

Mr. WILLIAMS OF TEXAS. If you have a way to put a compliance officer on commission, let me know.

I yield back.

Chairman PERLMUTTER. The gentleman's time has expired.

The gentleman from New York, Mr. Torres, is now recognized for 5 minutes for his questions.

Mr. TORRES. Thank you, Mr. Chairman.

It has become increasingly fashionable for banks and corporations to preach the gospel of equity and inclusion, but the banking industry should do some soul searching and ask itself: What are we to make of the racial inequity and exclusion brought on by overdraft fees? The imposition of overdraft fees at the expense of the poorest people of color in places like the South Bronx flatly contradicts every notion of equity and inclusion. Poverty is expensive in America, and the prohibitive expense of poverty in America can be measured, in part, by overdraft fees.

The overdraft fee for a single transaction can be as high as $36, which is 5 times higher than the Federal minimum wage. In 2019, overdraft and non-sufficient funds fees generated an historic high of more than $15 billion in revenue for the banking industry. According to the CFPB, overdraft and NSF fees make up two-thirds of revenues generated by fees. Overdraft fees are so common that 1 in 11 Americans pay more than $350 a year. And even more troubling, less than 8 percent of customers pay a staggering 80 percent of the overdraft fees.

And is it fair to say, Ms. Crawford-Hicks, that those customers are disproportionately lower-income people of color?

Ms. CRAWFORD-HICKS. It is fair to say that the overdrafts are affecting people of color disproportionately. Again, in my testimony, we are looking at 80 percent of overdraft fees from 9 percent of those accounts.

And going back to my colleague, Mr. Zywicki's, point about overdraft fees not affecting low-income people, again I state that people of color do not own the most wealth in this country. So if 80 percent of overdraft fees are coming from 9 percent of the accounts, it must be coming disproportionately from people of color.

Mr. TORRES. According to the Pew Charitable Trust, in 2016, 7 in 10 customers who repeatedly overdrafted earned less than $50,000 a year, which is hardly high income in a place like Washington, D.C., or New York City. Nearly 25 percent of the repeat overdrafters pay fees equal to one week or more of wages. Let that sink in for a moment. There are 52 weeks in a year, and there are wage earners for whom a whole week of wages, or several weeks of wages, are devoured by overdraft fees alone.

Is it fair to say, Mr. Sueiro, that those wage earners are more likely to face barriers to accessing affordable and reliable credit?

Mr. SUEIRO. Yes. One of the things that we see in the FDIC report from 2019 is that three answers that unbanked people gave were associated with cost when it came to barriers to gaining entry into the financial system.

Another report from the Center for Responsible Lending found that a million people, roughly, were left out of the banking system as a result of overdraft fees specifically. And then, we have seen a lot of research showing that the high cost of banking generally is an impediment for low-income people and Latinos gaining access to the financial system.

Mr. TORRES. So, it is fair to say that when it comes to credit, there is a tale of two Americas. Those with higher incomes have access to affordable and reliable credit, and those with lower incomes in places like the South Bronx often have no choice but to pursue de facto credit in the form of an overdraft, which again carries a fee that is 5 times the Federal minimum wage.

Ms. Crawford-Hicks, you spoke about the closing of accounts leading to the blacklisting of the lowest-income Americans. Can you elaborate?

Ms. CRAWFORD-HICKS. Yes. Overdraft fees, and when you are put in a cycle of overdraft fees, just like my husband and I were before I was able to find a job in California, it contributes to the cycle of when you are getting paid, most of your check is going to those overdraft fees. So, it does lead to people being unbanked, because if you overdraft multiple times, the bank will want to close the account, and because of these fees, people do not trust banks and decide to stay unbanked.

Mr. TORRES. Mr. Zywicki, I suspect we are going to disagree on this question, but there are banks for which the majority of their revenues come from overdraft fees. If you are a bank for which the majority of your profitability on which your very existence depends comes from overdraft fees, does that strike you as a healthy business model for a bank?

Mr. ZYWICKI. Yes, I am familiar; I have seen these reports on a couple of small banks in particular that do this. One that particularly concerns me is that there does seem to be some evidence that ever since the Military Lending Act went into effect, thereby restricting access of the military to a lot of other forms of credit, they have ended up using a lot of overdraft.

Chairman PERLMUTTER. Mr. Zywicki, I am sorry that I keep interrupting you, but everybody seems to end on you, and I have to stop you, so I apologize for that. There will be an opportunity for the Members to submit written questions to all of you to follow up on this kind of thing.

The gentleman from Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman. This is a very intriguing subject, and as someone who is very familiar with overdraft fees—especially in my younger years in the military, when I paid quite a few of those—this is an interesting subject.

But I do want to quickly go back to some of the discussion we have had about who is paying the overdraft fees. I will ask Mr. Greer or Ms. Crawford-Hicks, whomever can answer this, I have heard the numbers we are talking about, who is paying the most fees. Are there instances that banks that are in minority communities—because some of the information I am getting kind of sounds this way. Are banks that are in minority communities charging a higher fee per overdraft than banks not in minority communities? Is that what we are saying? Is that why minority communities are paying more in overdraft, because they are being charged more? Whomever can answer that question.

Ms. CRAWFORD-HICKS. No, that is not what we are saying. Overdraft fees seem to be pretty standard across-the-board, except when you are looking at credit unions.

Mr. LOUDERMILK. So, what you are saying is that minority communities are doing more overdrafts than non-minority communities. Is that what we are getting at?

Ms. CRAWFORD-HICKS. Minority communities are usually low-income communities, making $50,000 or less a year. And when you are taking care of a family and you are going to the grocery store and inadvertently overdrafting your account, yes, there is inflation.

Mr. LOUDERMILK. Okay. Most of my life, before I got into Congress, I made $50,000 a year or less. I never considered myself poor in that aspect. And as far as overdraft, after I learned a great lesson from that—that lesson was I went to a grocery store one time, had a cart full of groceries that my family needed, and the grocery store wouldn't accept my check because I had unpaid overdraft fees, which, to Mr. Zywicki's point, is what a lot of what people are using it for. But the issue I had was the expenditures I made at the beginning of the month, because while my colleagues in the military were bringing their lunch to work, I was eating out, I was going out with my family. So, it was a decision I was making.

In fact, I started listening to Zig Ziglar. I don't know if you remember that. Zig Ziglar had lost a whole lot of weight, and he said that he finally decided that he was choosing to be overweight, because he never accidentally ate a double cheeseburger. Now, what that told me is that I was making particular choices. As one of my colleagues, Mr. Barr, said, there are people who are making those choices, for instance, the horse traders. They are paying a lot less in an overdraft fee than they would for a line of credit, right?

So, there is a choice function there. I am not saying that they are having to make this choice. Yes, there are some problems with this, and we do have to address it one way or the other, because at the rate this Administration is driving up inflation, I imagine this is going to get worse before it gets better.

I do like some of the things that I heard Mr. Kundert say that they have done in their credit union, but I do have one question to ask there. You said this did cost you some revenue when you made your changes to overdraft fees. How did you make up for that revenue? Did you just take that as a loss? Did you raise fees in other areas, or did you open up more lines of revenue coming in? How did you make up for that loss?

Mr. KUNDERT. We primarily made up for it over time by building more efficiency into the organization. When we benchmark our operating costs to other similar size institutions, we are often in the 90th percentile for operating expense efficiency per household. That took some time and some focus, but that is primarily how we did it, because we have to compete on price on all of the other consumer products we offer. We can't be out of line in market—

Mr. LOUDERMILK. So, you cut costs in other areas. Okay, that answers that question.

As I am quickly running out of time, Mr. Zywicki, is it economically sound to expect a private business to provide a service it can't afford? What is going to happen if we force banks—and I know some banks that exclusively operate in minority communities. If we force those banks to make changes they can't afford, and they can't cut costs like the credit union has done, what is the result of that?

Mr. ZYWICKI. The first thing that will happen is they will have to find fees somewhere else. The second thing is that people are probably going to overdraft more, which probably means your losses are going to go up as well.

Mr. LOUDERMILK. And that does put people in a spiral. I have been in that spiral, but it was a spiral I knew I inevitably chose to be in because people who were in the same income bracket I was in were not having the same problem I was having. I am not saying that is in every case, but we do have to consider that when we are looking at making national changes.

And I yield back the remaining time I no longer have, Mr. Chairman.

Chairman PERLMUTTER. The gentleman yields back the time he doesn't have.

The gentlelady from Massachusetts, who is also the Vice Chair of this subcommittee, Ms. Pressley, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Chairman Perlmutter.

Being poor in America is expensive. Millions of families and workers are living paycheck to paycheck, struggling to make ends meet due to unlivable wages, a lack of affordable health care, the absence of paid leave, and many other policies which are pushing families farther to the margins. And yet these are the very same people, the very same families who, at their most financially vulnerable moments, are charged overdraft fees by banks.

Ms. Crawford-Hicks, some large banks have voluntarily reduced or eliminated overdraft fees, but many have not. According to the Brookings Institution, after 2021, 6 banks relied on these fees for more than half of their net income, and 3 of those banks relied on them for 100 percent of their profits.

Is it fair to say that this business model is based on making poverty a sustainably profitable enterprise?

Ms. CRAWFORD-HICKS. Thank you, Representative Pressley, for that question. I keep going back to this point because I want to drive it in. I wholeheartedly agree that this business model is based on making poverty a sustainably profitable enterprise. As I stated in my testimony, nearly 80 percent of overdraft revenue comes from 9 percent of accounts, with median account balances of $350 or less, making it very expensive to be poor. And just going back to the point that was made previously, it is not about choices; it is about access to resources.

Ms. PRESSLEY. Thank you, Ms. Crawford-Hicks, and certainly no apologies needed here for being repetitive. As tired as people might be of hearing those sobering data points, imagine how exhausting it is to live it.

Can we really trust banks that rely on overdraft fees for a majority of their income, their net income, to voluntarily reform? Or do you agree that we need to ban overdraft and other junk fees for good?

Ms. CRAWFORD-HICKS. I am extremely leery of financial institutions that in 2020 made billions of dollars in overdraft fees at one of the most vulnerable times in American history, to voluntarily cease profiting from these fees. Using regulatory and legislative intervention is imperative to protect those living on the margins from being preyed upon by financial institutions, and just to level the playing field for those who are being taken advantage of by this.

Ms. PRESSLEY. Thank you, Ms. Crawford-Hicks. While I was calling for, to your point, building upon that, while myself and others were calling for overdraft fees to be abolished last year, big banks actually raked in billions of dollars of profits from those fees. So, can you tell us how big banks capitalize off of people facing great and unprecedented economic hardship during this pandemic?

Ms. CRAWFORD-HICKS. Representative Pressley, speaking of sobering data points, according to The American Prospect, JPMorgan Chase, for example, made $1.5 billion in revenue on overdraft alone in 2020. And according to the recent findings from the FDIC, during that same period, Bank of America made $1.1 billion in profits, and Wells Fargo made $1.3 billion in profits. And in the final 3 months of 2020, when the pandemic was at its worst and deadliest, all 3 of those banks made $300 million just in overdraft fees alone. So, while Americans suffered through the worst wave of the worst public health crisis in 100 years, and unemployment was skyrocketing, the country's biggest banks were gouging poor Americans for billions of dollars in punitive fees.

Ms. PRESSLEY. Thank you, Ms. Crawford-Hicks.

It is clear that because it is profitable, it certainly is not incentivizing for them to do this on their own. So, how can we reform such an abusive and predatory practice that punishes people simply for being poor? The short answer is that we don't. We have to abolish these practices once and for all.

Thank you, and I yield back.

Chairman PERLMUTTER. The gentlelady yields back.

The gentleman from Tennessee, Mr. Kustoff, is now recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman, and thank you to the witnesses for appearing today.

Professor Zywicki, I received an email from Morning Consult. It was in February it came out, and their numbers showed in their survey that 89 percent of consumers find their bank's overdraft protection valuable. Seventy-four percent of consumers who have paid an overdraft fee in the past year likely were glad that their bank covered the overdraft, which runs contrary, obviously, to the tone of this hearing.

But if I can, I would like to drill down a little bit from Congressman Barr's questions to you. As it relates to an overdraft fee or a debit card or an ATM transaction, the bank has to provide the consumer with the disclosure which lists the fee for the charge for the overdraft transaction. Is that correct? And then, the consumer has to opt in, if I am correct, for overdraft coverage in order to be charged an overdraft fee, at least as it relates to the debit card or the ATM. Is that correct?

Mr. ZYWICKI. That is correct, yes.

Mr. KUSTOFF. And as a corollary, the consumer also can opt out at any time. Is that correct?

Mr. ZYWICKI. That is correct, yes.

Mr. KUSTOFF. I am just going to ask a rhetorical question. If a consumer can willingly opt into overdraft coverage or opt out, why are we trying to protect consumers or employ additional restrictions or take away the right for them to have overdraft protection on a product?

Mr. ZYWICKI. I don't know. They can opt in, they can opt out, and I think it is also significant, as I mentioned in my remarks, that people who overdraft frequently actually check their balances more often. They make more use of online banking and they kind of constantly know what is going through their accounts, and they know they are taking a chance, basically, when they make that payment.

Mr. KUSTOFF. Thank you.

I think, as we all know, we are experiencing the highest inflation we have experienced in 40 years due to the economic policies and the wild spending that the Federal Government has engaged in over the last 12 months. The Federal Reserve reports right now that half of the country couldn't cover a $400 emergency expenditure. And obviously, few people have the resources to turn anywhere else to get help.

In the past, we have had banks offer short-term liquidity products. Obviously, regulation has effectively taken a number of banks out of this space, which means that ultimately, consumers have fewer alternatives for emergency needs.

I came from a community bank board. Hypothetically, if you were running a community bank, and overdraft protection were to completely go away, how would your community bank respond, and ultimately what would that mean for consumers?

Mr. ZYWICKI. I don't know. It is very limited. As you said, every time you try to have a new product that adds more complexity, there are more compliance costs. The other thing we know is that post-Dodd-Frank, community banks have already stepped back from products they used to have, such as mortgages, because of the regulatory costs of compliance associated with that. So, I think it really puts community banks in a very difficult position.

Mr. KUSTOFF. If you were a policymaker or you were in the financial services industry, what would you do to support or to create innovative products to try to help consumers with their short-term needs? What else can we do?

Mr. ZYWICKI. As I mentioned, I think the answer here is more competition, more entry. As I said again, fintech industrial loan companies, earned wage access, direct deposit advance, all of these things I think are viable options for consumers that solve this.

If I could say one last thing, the correlation here—and first, let me say, I never said it doesn't affect low-income consumers. Obviously, this affects all consumers who overdraft, but especially low-income consumers, because it is a fixed fee. But what drives this is credit score, and the Fed has shown that credit score is generally not correlated with income and it is not correlated with demographic factors such as race. It is a credit score issue, not a race or income issue, once you control for credit score in that sense. I am not talking about some of the things they are talking about. But I just wanted to make that very clear.

Mr. KUSTOFF. Thank you.

Mr. Chairman, I yield back.

Chairman PERLMUTTER. The gentleman yields back.

I think we have three more Members to ask questions, so I am going to go to Mr. Rose first, then Mrs. Maloney, and then, Mr. Timmons.

The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairman Perlmutter and Ranking Member Luetkemeyer, for holding this hearing, and thank you to our witnesses for being with us today.

The CFPB under Director Chopra continues to assert that the financial services industry is not competitive and is using this as a premise to justify an extremely aggressive rulemaking agenda.

Yesterday, CFPB Program Manager Joe Valenti published a blog post stating that, "Overdraft fees are among the kinds of junk fees that far exceed what it costs the institution to provide the associated product or service and do not appear to be subject to competitive forces."

Professor Zywicki, would you describe the market for overdraft products and other short-term credit as competitive? Or do you agree with this blog post from the CFPB?

Mr. ZYWICKI. I think it is competitive. It could be more competitive. We know, for example, in States that outlawed payday loans, what happens is NSF fees go up, bounced checks go up, overdraft fees go up, right? When you take away competition from banks, they make more money off of overdraft fees and NSF fees. So, I think the corollary is more competition for banks. There is already competition, but more competition, I think, would be the path I would pursue here.

Mr. ROSE. The Biden Administration seems to think that regulation, not market forces, drives competition. This was made especially clear in President Biden's 2021 Executive Order on promoting competition in the American economy.

Professor Zywicki, do you think more regulation from the CFPB is the solution to increasing market competition?

Mr. ZYWICKI. No, unfortunately, regulations usually reduce competition rather than increasing it, at least the way that it has been transpiring.

Mr. ROSE. Professor, you previously served as the Chair of the CFPB's Task Force on Consumer Financial Law under Director Kraninger. The task force identified recommendations for improving competition, including studying ways to ease changing accounts between financial institutions, avoiding the anti-competitive barriers to entry, and studying the cost of lending in key product markets. Could you describe some of the task force's work on these issues?

Mr. ZYWICKI. Thank you, yes. We have a number of recommendations that go to this, one that was mentioned earlier. I really believe that faster payments should be something that we should push on, but also bank account portability, as you said, greater fintech. We also talked a lot about credit scores, and I think one opportunity is to make greater use of alternative financial data to look at other sources rather than traditional credit scores in determining who is a good risk and the like. So, I think there is a lot of room for innovation in this market to put more competitive pressure on banks to do better, to create bank account portability, open banking, and a lot of things that would cause them to be more responsive to consumer demands.

Mr. ROSE. Could you drill down a little on the banking account portability question and what sorts of approaches you would recommend or would like to see implemented there?

Mr. ZYWICKI. The details of that, I think, still need to be worked out, but the model is obviously cell phone portability, which has been very popular. You can change your cell phone carrier while keeping your same number. Right now, it is very difficult to change bank accounts. It is really just a pain because you have to deal with trailing checks and that sort of thing. So, I think trying to work through the regulation and the process would facilitate bank accounts, because right now, people can change credit cards very easily, for example, which drives a lot of competition in the credit card market. But when it comes to bank accounts, they are very sticky, and banks make them more sticky. Rather than facilitating competition, if a bank wants new accounts, rather than trying to track them, it seems like they just buy another bank, right? So, we consolidate the industry, we are getting more, and the like. I think that would be something that would be worthy of study by the Fed and others for how to improve bank accounts, and make it easier to switch bank accounts.

Mr. ROSE. Thank you.

In the last seconds I have, I want to just relay an anecdote from one of my bankers back in my district whom I was having dinner with a few weeks ago, and he related to me that one of his customers—and this is kind of following on what Representative Barr said earlier—an elderly lady, on a limited income, perpetually came up short at the end of the month, and so essentially, once a month, she overdrafted.

She came to the bank and she said, "Please, whatever you do, don't take away my overdraft capability." And I think it underscores that this oftentimes provides a needed outlet for many banking customers.

Thank you, Mr. Chairman. I yield back.

Chairman PERLMUTTER. The gentleman yields back.

I was mistaken. Mr. Timmons, you are going next. So, I am going to yield to the gentleman from South Carolina, and then we will close with Mrs. Maloney from New York.

The gentleman is recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman.

Professor Zywicki, since Dodd-Frank passed, how have community banks across the country generally fared?

Mr. ZYWICKI. They have not fared well. As you know, the banking industry has become more consolidated, and community banks have shrunk.

Mr. TIMMONS. What about the regional banks?

Mr. ZYWICKI. The regional banks have tended to constrict also. The big banks have gotten bigger. The too-big-to-fail banks have gotten even bigger.

Mr. TIMMONS. Generally, who bears the brunt of proposals such as the Maloney overdraft bill, what types of institutions?

Mr. ZYWICKI. In the short run, small banks bear most of the brunt, for the reasons we have talked about.

Mr. TIMMONS. And Federal requirements, Federal regulations are largely more challenging to comply with when you are a smaller bank. Is that fair?

Mr. ZYWICKI. That is right. To hire another 150 lawyers at Citi is a rounding error. To hire one more compliance officer at some small bank could be the difference between profitability and not.

Mr. TIMMONS. And they are already struggling with things like cyber security, where they are trying to invest appropriately, and that is a huge line on their balance sheet. So, it is fair to say that if you are a small bank in this country post-Dodd-Frank, it has been challenging, and you are barely getting by?

Mr. ZYWICKI. That is an understatement.

Mr. TIMMONS. Thank you.

I am confused about what exactly we think we are accomplishing with this hearing and the Maloney bill. It is obvious to me that this is just another onerous mandate for smaller financial institutions like community banks and credit unions, especially given that consumers already have to opt in for overdraft protection and can opt out at any time. On top of this, a recent survey from Morning Consult shows that 89 percent of consumers value their bank's overdraft protection, and even 74 percent of individuals who have been subject to an overdraft fee over the last year were glad their bank covered the payment.

Professor, if consumers no longer had access to overdraft protection through their financial institutions, what recourse would they have?

Mr. ZYWICKI. They would either be forced to not be able to purchase things that they need, or they would have to turn to some less attractive alternative, usually payday loans, because, as we talked about, credit cards aren't available for these people.

The other thing we know is that occasional overdrafters and frequent overdrafters are different categories. You can get a fee waiver, especially if you are an occasional overdrafter. An important point that Michael Flores found is that low-income consumers are more likely to get fee waivers than people with higher levels of deposits. There are other things going on in people's relationships with banks if they are occasional overdrafters versus frequent overdrafters.

Mr. TIMMONS. I remember long ago, I had challenges with this. My first debit card didn't really—I wasn't very good with my money at a certain point in my life, my entire life. But my question is this, how often do people get the benefit of overdraft protection and it changes their day and their week, instead of the alternative, which is to be declined and be unable to do something at gas stations or grocery stores? There are oftentimes when if you are not able to get the benefit of your overdraft protection, it could be very problematic.

Mr. ZYWICKI. And that is the fundamental problem here, Congressman Timmons, which is taking away people's options isn't going to resolve the problem, right? Taking away the supply of overdraft protection isn't going to take away the demand, because people still have a lot of bills they need to pay, a lot of necessities that they need to pay for, and that is the fundamental problem here, or the fundamental difficulty, which is, what happens to these people if you take it away? And based on what I can tell, the options are even less attractive than the ones they have now, especially given that they seem to be using it—heavy overdrafters at least—knowingly. They have opted in, they are monitoring their balances, and they understand basically what they are doing here, but they don't have better options available to them.

Mr. TIMMONS. Thank you.

This hearing's proposal is just another example of my colleagues across the aisle thinking that they know what is best for the American people. They want to run our lives because they don't think that we are capable of making correct decisions. This proposal removes choice and options for consumers in the name of protection, but it is really just another way to impose the will of my colleagues across the aisle on the American people.

Thank you, Mr. Chairman. I yield back.

Chairman PERLMUTTER. The gentleman yields back.

I was mistaken again. Mr. Foster has arrived, and we will let him ask his questions for 5 minutes, and then Mrs. Maloney will close.

Mr. Foster is recognized for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chairman.

I find it interesting that many banks and credit unions are already making changes to overdraft policies. According to the CFPB, since September 2021, nearly half of the 20 banks that collect the most overdraft fees have announced that they will eliminate the fees altogether. I think this sort of behavior is likely to continue as we move to a high-interest-rate environment where you actually have alternate sources of income for banks and they won't depend on reordering things and so on to generate overdraft fees.

Several of these have already eliminated, as I mentioned, the overdraft fee programs in place. Chris Leonard, the CEO of Velocity Solutions, an overdraft and compliance management company, has asserted that overdraft fees should not be jettisoned completely, saying that many consumers actually like having the option, although I imagine very few like having the things reordered to maximize those fees.

In reality, most of these fees are incurred because people are simply unaware that their account is too low and that they are about to incur a charge. Then, unfortunately, they get their cup of coffee or pay for parking and they are handed a $30 or $40 fee to complete the $5 transaction.

And seeing as most accounts are rectified very quickly, the short-term financing option seems wildly unappealing from a consumer financial standpoint.

I am personally very glad to see that competition among the banks has driven this trend to modify or eliminate these fee arrangements. So my question, I guess to all of the witnesses, is that someone has to be the first to eliminate overdraft fees in their checking products. Is this just a reaction to a wildly popular consumer idea, or are there other factors influencing the change across the industry, such as, for example, moving to a higher interest rate environment?

Mr. GREER. Congressman, we have been talking about protection, and we have been talking about fees. Those two are different things. People can opt into protection, get an expense covered through credit, and then also charged a fee. There are banks that do that. Wells Fargo is one of them, for example. Then there are people who can opt out, and then what they get is an insufficient funds fee even though the transaction [inaudible]. There has been a lot of conversation about protection and fees, and I just want to say that those things are two different things in the financial sector.

As far as industry-wide, again, I think we have to recognize that particularly people of color are low wealth, and not having access to credit is one of the things that drives low wealth. Not having access to predictable income that allows them to build assets is another. And to strip that money out of their accounts through things like fees has implications beyond whether or not they are able to buy a cup of coffee.

Mr. SUEIRO. To your question, Congressman, about what has caused some banks to make these changes, in the middle of last year, around the middle of last year, Ally Bank and Chime, which are online banks, made announcements that they would eliminate fees or reduce overdraft fees, so that has put pressure on other banks to follow suit. And then late last year, Director Chopra of the CFPB also made an announcement that the CFPB would focus more on junk fees and on overdraft fees specifically. So, I think the combination of the two things also, in addition to consumers saying that they want overdraft protection and overdraft fees reduced, has led to these changes.

Mr. FOSTER. Ms. Crawford-Hicks, do you have any comments about what is driving this and how much we can expect it to continue without more intervention by the government?

Ms. CRAWFORD-HICKS. I think my colleagues summed it up beautifully in terms of what is driving it, and I just wanted to home in on the point that fees and protection are different things. We are not saying to end overdraft protection. We are just saying that these fees, as Representative Maloney points out in her bill, should be reasonable and proportional to what it costs the banks to actually take care of the overdraft.

Mr. FOSTER. Mr. Kundert, can you talk about how your credit union was involved in this process?

Mr. KUNDERT. Yes. In my written testimony, I covered it in great detail, but we reformed our practices in 2010 in response to the Regulation E update, and then, last year, reduced our fee to $5.

Definitely, there is change happening in the industry. Prior to 2020, you might have questioned, is there competition? There wasn't much evidence of it, but things are changing now. They changed in the last year. How much of it is concern over regulatory scrutiny, and how much is competition, I couldn't sort out right now. I think time will reveal that.

Chairman PERLMUTTER. Mr. Kundert, I am going to interrupt you this time. The gentleman from Illinois' time has expired.

I will now recognize the gentlelady from New York, Mrs. Maloney, for 5 minutes for her questions.

Mrs. MALONEY. Thank you, Chairman Perlmutter. And may I express how sad I am that you have decided to retire. Today's hearing shows your focus on protecting consumers, and your focus on affordable housing. You will be deeply missed. I thank you for having this hearing, as well as the ranking member.

There was a report that came out from the CFPB which showed that in 2019, consumers paid over $15 billion in overdraft fees. Granted, some people opted in, and I am not trying to take away an opt-in. I think an opt-in should be there if they want it. But too often, people are caught in tricks and gimmicks and unfair, deceptive practices that force them, really, into overdraft fees, such as reordering the priority of your fees so that your rent check comes first. I know constituents, some of whom pay $200 in overdraft fees they didn't even know they had overdrafted. They didn't know that the bank took their rent check and put it before their coffee or their sandwich, and it racks up. So, my bill tries to cut down on these unfair and deceptive practices.

I have here a report from the CFPB that I requested, and there are many, many people who have taken steps to change the overdraft fees, to eliminate them in some cases, or to lower them in some cases. But I have been studying this since 2009, when I put my bill in, and it is confusing to me because everybody is doing something different. Everybody is doing something different, and I applaud their efforts. But if I were a consumer, and I am a consumer, it is very confusing.

So, my question to Mr. Greer, Ms. Crawford-Hicks, Mr. Kundert, and Mr. Sueiro, is, do you think consumers would benefit by at least, at minimum, having some baseline level of protections for overdraft practices such as my bill?

Let's start with you, Ms. Crawford-Hicks, yes or no?

Ms. CRAWFORD-HICKS. Absolutely.

Mrs. MALONEY. Thank you.

Mr. Kundert?

Mr. KUNDERT. Yes, I do.

Mrs. MALONEY. Okay. Mr. Sueiro?

Mr. SUEIRO. Yes.

Mrs. MALONEY. Mr. Greer?

Mr. GREER. Yes.

Mrs. MALONEY. Okay. That's great; you all agree on that.

Do you think those protections should include common-sense limits on the number of overdrafts that are allowed per month, improved transparency so people understand what is happening, and banning banks from reordering transactions to maximize the number of overdraft fees for people?

Let's start with you, Mr. Greer.

Mr. GREER. Yes, I think it should.

Mrs. MALONEY. And let's just go down the line. Ms. Crawford-Hicks?

Ms. CRAWFORD-HICKS. Yes.

Mrs. MALONEY. Mr. Sueiro?

Mr. SUEIRO. Yes. It depends on what that looks like, and we agree that some people would definitely want overdraft protection. But, yes, we agree with that.

Mrs. MALONEY. That is exactly what my bill does. It allows people, if they want the overdraft protection, to opt in. That is one of the requirements of the bill, that people be notified that if you want this protection, you opt in. But too often, I hear from my constituents that they bought a loaf of bread, $35; a cup of coffee, $35; a newspaper, $35; and some, at the end of the weekend, because they didn't know they had overdrafted, will have $200 in fees. I would say that is unfair and deceptive and extremely hard on some of the most-vulnerable in our society.

Now, from your perspective, Ms. Crawford-Hicks, do you think someone should be charged $35 for a $2 cup of coffee?

Ms. CRAWFORD-HICKS. No, especially if they didn't know they overdrafted.

Mrs. MALONEY. Right.

Mr. Sueiro?

Mr. SUEIRO. I agree, 100 percent.

Mrs. MALONEY. Okay.

And Mr. Greer and Mr. Kundert?

Mr. GREER. No.

Mr. KUNDERT. No.

Mrs. MALONEY. Okay, a no. You have gone down to a $5 cup of coffee, and that is a movement in the right direction. But everybody has something different here.

Mr. KUNDERT. Actually, no. We have a de minimis so that no overdraft would be incurred for anything less than $10, and we don't permit overdrafts from debit card use.

Mrs. MALONEY. But as you see, everybody has a different proposal. I would like to suggest, since the CFPB was referenced several times during this hearing, that we invite the Director of the CFPB to come in for some clarification on this. I do have a bill that I have had in for a number of years, the Overdraft Protection Act, which is common sense. Some of the panelists today have endorsed it. It has common-sense practices that protect the consumer. I, for one, would like to see that $15 billion kept in the pockets of some of our most-needy residents, and not going to unfair, deceptive, and manipulative overdraft fees.

My time has expired.

Chairman PERLMUTTER. The gentlelady's time has expired.

CFPB Director Chopra is going to testify in front of the Full Committee next month, so we will have an opportunity to discuss this with him then.

Do you want to introduce that chart into the record?

Mrs. MALONEY. I would like to introduce it into the record, and I am going to have it up on my website, and I think we should put it up on the website of the committee.

Chairman PERLMUTTER. Without objection, it is so ordered.

Mrs. MALONEY. It is very confusing, but I applaud Wells Fargo, JPMorgan Chase, Bank of America, TD Bank, Citi Bank—

Chairman PERLMUTTER. Okay, it is in the record.

[laughter]

Mrs. MALONEY. There are about 13 banks that have come out and curbed them in some way or another, but each one has done it differently. No one has done it the same way.

Chairman PERLMUTTER. Okay, we got it. The gentlelady's time has expired. We will introduce your chart into the record.

I want to thank the witnesses, and I want to thank all of you. The discussion about fees versus protection is very important, to be able to make that distinction. I appreciate everybody's testimony here today.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Thank you all very much for your time, for your testimony, and for your patience with us.

With that, this hearing is adjourned.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

A P P E N D I X

March 31, 2022

Elyse Crawford-Hicks
Written Testimony
House Financial Services Subcommittee Hearing on Overdraft Fees

Thank you and good morning Chair Perlmutter, Ranking Member Luetkemeyer and the members of the subcommittee. As a proud former military spouse of a Spc. in the United States Army, I know first-hand that running a household on military pay can be quite difficult for lower enlisted personnel. Every month, my husband, who had opted into overdraft protection at one of the top 20 big banks, watched his pay be eaten up by $35 overdraft fees. A cycle that continued paycheck after paycheck until I, a DC licensed attorney who was stationed in California, was able to find employment after jumping through strenuous licensing requirements for the state.

My husband and I are not alone. Overdraft fees are paid the most by the people who can least afford them. These are high fees that, (1) bear no relationship to the costs banks incur in covering overdrafts, (2) have the potential to explode into hundreds of dollars in fees; and, (3) can be near-impossible to avoid for people living paycheck to paycheck.

According to research from the CFPB, overdraft fees have become a **cash cow for financial institutions**. In 2019 banks and credit unions charged more than $15 billion in overdraft and non-sufficient fund ("bounced check") fees, with these fees making up a particularly large portion of smaller banks' net profits.[1] This money is mostly made off the backs of some of America's most financially vulnerable families, disproportionately affecting communities of color.

Overdraft fees are a **penalty for being poor or financially insecure**. Nearly 80 percent of overdraft fee revenue to banks comes from 9 percent of accounts. The median account balance of this group is less than $350.[2]

It can be extremely challenging for people with low balances to avoid being hit with an overdraft fee. The timing of when debits and credits are posted to a checking account is opaque, complicated, and out of the consumers' control, and in the past some banks have changed the order of certain transactions so they debit from largest to smallest to increase the number of overdraft fees triggered.

Overdraft fees should not be used as a high-cost form of credit and should be eliminated or returned to an occasional courtesy for covering a check or preauthorized electronic payment. Banks should be allowed to impose no more than six overdraft fees a year. Beyond that, they should cover overdrafts through overdraft lines of credit with a reasonable interest rate instead of a huge overdraft fee.

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[1] *CFPB research shows Banks' deep dependence on overdraft fees*. Consumer Financial Protection Bureau. (2021, December 1). Retrieved March 29, 2022, from https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/

[2] *CFPB research shows Banks' deep dependence on overdraft fees*. Consumer Financial Protection Bureau. (2021, December 1). Retrieved March 29, 2022, from https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/

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; when a bank hits a negative balance with repeated overdraft fees, it can make it impossible for the consumer to recover, so the bank will close the account. When the account is closed, the financial institution submits the customer's name to a database that acts like a blacklist, which can prevent the customer from opening a new account elsewhere for several years.

Among people with checking accounts, **Black and Latino Americans are more likely than white Americans** to incur overdraft fees.[3] It is wrong that a person who is struggling to get by get exploited with a surprise $35 fee just because they inadvertently overdraw their account while buying milk. ($35 is a typical fee).

Some banks have made significant changes to their overdraft programs, with a small number eliminating all overdraft fees, others getting rid of their non-sufficient fees, and some making more modest changes like 24-hour grace periods. **While this is positive for these banks' customers, these measures are insufficient by themselves.** We need financial regulators to take decisive action to stop abusive overdraft fees at all financial institutions and to prevent them from coming back.

Harmful overdraft practices remain a systemic problem that policymakers should address. Unless fair, legally binding rules for overdraft are established, abusive fees will remain. We also need to look out for new "fintech" forms of overdraft fees, like fees hidden as purportedly voluntary "tips."

Solutions

We urge representatives to co-sponsor and support Representative Maloney's Overdraft Protection Act (H.R. 4277) and Senators to support Senator Booker's Stop Overdraft Profiteering Act (S. 2677). These bills would cap the number of overdraft fees at one per month and six per year, while allowing additional overdrafts to be covered through overdraft lines of credit or transfers from linked accounts; limit each overdraft and NSF fee to an amount that is "reasonable and proportional" to financial institutions' costs in the overdraft coverage; require consumers to opt in to any overdraft coverage; and prohibit banks from reordering of transactions to maximize overdraft fees. S. 2677 also prohibits overdraft fees on debit card and ATM transactions. Might add something about the sign on letter

We urge the CFPB to use its rulemaking authority to end abusive overdraft fee practices and to ensure that consumers are safe at every bank and credit union. We also urge the other federal financial regulators – OCC, Federal Reserve, NCUA, and FDIC – to use their supervision and

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[3] Greene Director, W. by M., Greene Director, M., & Arves Manager, S. (2021, September 3). *Amid resurgence of interest in overdraft, new data reveal how inequitable it can be*. Financial Health Network. Retrieved March 29, 2022, from https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/

other authorities to address this problem. And we urge members of Congress to highlight the importance of action by these regulators. All regulators must also pay attention to emerging forms of evasion and abusive overdraft practices.

Thank you for inviting me to testify. I would be happy to answer your questions.

Written Testimony for Jeremie Greer
Co-Founder and Co-Executive Director
Liberation in a Generation

U.S. House Financial Services Committee
Subcommittee on Consumer Protection and Financial Institutions

"The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions"

Mar 31, 2022

Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Subcommittee for holding this important hearing to examine the movement to eliminate overdraft fees—which are costing consumers billions of dollars—and for the opportunity to testify before you today. My name is Jeremie Greer and I am the Co-Founder and Co-Executive Director of Liberation in a Generation (LibGen).

I am here today on behalf of Liberation in a Generation. LibGen is a national movement organization and was founded in 2018 to build the power of people of color across the country to transform the economy—who controls it, how it works, and most importantly, for whom it works for. We bring together a stakeholder group of advocates, community organizers, economists, and other proven and emerging thought and movement leaders of color from across the country, to build a Liberation Economy, within one generation.

We believe that it is possible to create an economy where all Black, Indigenous, Latinx, Asian and Pacific Islander people can thrive. To accomplish this, we are fighting to dismantle what we call the *oppression economy*. Historically and even more prevalent today, elite institutions use racism and discrimination as a tool to expand their power and wealth, all while suppressing the economic power of communities of color and other marginalized groups. These elite institutions that control resources use that control to change the rules of our economy in their favor, which continues the cycle of profit.

Overdraft Fees Negatively Impact Consumers

Financial institutions across the country, large or small, have the ability and authority to unburden their customers with junk fees such as overdraft charges—the question is whether they have the will to do it. Each year, banks take in billions of dollars in revenue from overdraft fees. Not only are overdraft fees opaque and manipulative, they have a tremendous impact on customers from communities of color, rural, and low-wealth communities. This is money made off the backs of people who are already struggling to make ends meet.

With billions of dollars flowing from consumers to financial institutions under the guise of junk fees, consumers need protection now more than ever. In the fourth quarter of 2021, commercial banks and

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savings institutions collected over $72 billion or thirty six percent of their income from fees.[1] These fees—which include overdraft fees, nonsufficient funds (NSF) fees, multiple fees per day, and *extended* or *sustained* overdraft fees—have become core parts of the standard business model used by financial institutions. Typically, banks charge $34 per overdraft or NSF transaction.[2] By law, banks are supposed to get a consumer's consent before charging them an overdraft or NSF fee. This places an undue burden on consumers to opt into overdraft protection. If a consumer has overdraft protection, the financial institution usually charges an overdraft fee while covering the transaction—even if it puts consumers in the negative. If a consumer lacks overdraft protection, financial institutions may not cover the transaction but still extract an NSF fee from consumers who choose to overdraw. Either way, banks will profit. What's even more concerning is that overdraft protection does not protect consumers from excessively high charges. As the Consumer Financial Protection Bureau (CFPB) reported, consumers who opted into protection paid seven times more in overdraft and NSF fees. Under the predatory business model of these financial institutions, consumers have no recourse. These fees are unreasonably high because financial institutions rely on them to entrench their wealth and that burden disproportionately falls on customers who cannot pay.

Overdraft and NSF fees are also used to prey on the consumers that need protection the most. About nine percent of consumers account for almost eighty percent of overdraft revenue and nearly half of all overdrafts are made by parents with children under the age of 18, which make up twenty seven percent of the adult population.[3,4] In the midst of the pandemic, communities of color paid over $4.5 billion in overdraft fees alone.[5] Black families paid over $800 million on fees for checking account maintenance, money orders and check cashing, while Hispanic families spent $1.1 billion on those services in 2020. These payments came from the same communities that have higher cost burdens, rates of evictions, and unemployment.[6,7,8] As millions of consumers "bounce out" of the financial system following the closure of their accounts due to excessive overdrafts, one-third of households without a bank account have identified high fees as a reason for remaining unbanked.[9,10] This

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[1] https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2021dec/

[2] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/

[3] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/

[4] https://morningconsult.com/2022/01/11/overdrafted-underbanked-and-looking-for-new-providers/

[5] https://drive.google.com/file/d/1g3sapYWADiIY6jcgV4IxDkM708gdYTZ6/view

[6] https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat-eviction-pandemic#:~:text=Figure%201%3A%20In%202019%2C%20Over,assumed%20to%20be%20without%20 burdens

[7] https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat-eviction-pandemic#:~:text=A%20 staggering%209.7%20percent%20of,(3.7%20percent)%20households%20reported

[8] https://www.cnbc.com/2021/08/06/unemployment-rate-falls-but-is-higher-for-black-and-hispanic-workers.html#:~:text=Investing%20Club-,Unemployment%20rate%20falls%20for%20every%20group%20but,for%20Black%20and%20Hispanic%20workers&text=Black%20and%20Hispanic%20unemployment%20dropped,was%20the%20lowest%20at%204.8%25

[9] Campbell, Dennis, F. Asis Martinez-Jerez, and Peter Tufano, 2012, Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures, Journal of Banking & Finance, 36(4): 1224-1235.

[10] Federal Deposit Insurance Corporation (FDIC), 2020, How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey.

affliction is particularly relevant for Black households, where nearly half—forty eight percent—are underbanked.[11] Over time, this disparity can cost these families nearly $40,000 in fees.[12] It is unsustainable for these families to shoulder excessive fees on top of navigating their daily expenses and a banking system that works to exclude them.

Lastly, these fees operate like an abusive form of high-cost credit. Overdraft and NSF fees allow consumers to have a negative balance while incurring a large overdraft fee. The problem with this is that these fees are connected to debit transactions which are the primary way in which consumers make payments from their checking accounts. While these fees give consumers a way to borrow and cover expenses, in no way are these fees better than payday loans—which are largely regarded as deceptive and abusive. To put into perspective, a CFPB study found that the majority of overdraft fees were incurred on transactions of $24 or less and were repaid within three days, meaning that if a $34 overdraft fee were charged as a loan, it would have an annual percentage rate (APR) of 17,000 percent. By comparison, payday loans typically yield a six hundred percent APR.[13] Overdraft and NSF fees go far beyond what should be accepted in a fair and inclusive financial market. Furthermore, almost seventy percent of all consumers who paid debit card overdraft fees were not aware that they could have their debit transactions declined at no cost.[14] This lack of transparency underpins the need for reform. Financial institutions use these opaque and manipulative tactics to reinforce fees and take advantage of consumers.

Policy Solution and Recommendations

With consideration to everything I have mentioned in my testimony, it is important that I acknowledge that there is no one-size-fits-all solution or magic bullet when it comes to addressing the harms of overdraft and other associated bank fees. We must ensure that financial institutions are held accountable for the predatory ways they assess fees—especially as it pertains to members of communities that have historically been the targets of these fees.

It is the recommendation of Liberation in a Generation that Congress and the Biden-Harris administration:

- **Encourage financial institutions to cease targeting consumers with predatory fees like the ones associated with overdrafting an account–bringing an end to junk fees altogether.** We have seen some financial institutions take this crucial step but this has not been adopted by banks en masse. Without pressure from Congress and the administration, we are leaving it up to banks to self regulate and continue to bring large amounts of revenue on

[11] https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-banking-and-credit.htm
[12] "2017 FDIC national survey of unbanked and underbanked households," FDIC, October 2018, fdic.gov.
[13] https://www.mic.com/impact/overdraft-fees-hurt-black-latinx-customers-the-most-this-bank-just-eliminated-them-81078805
[14] https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/overdraft-does-not-meet-the-needs-of-most-consumers

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the backs of predominantly low-wealth consumers. Just in March, we have seen one of largest banks in the country, Citigroup, announce that they will end their overdraft fees for customers—calling it a focus on financial inclusion.[15] Citi's announcement comes after Capital One announced it would eliminate their bank overdraft fees in 2022. This appears to be a step in the right direction but true progress can not be realized until both large and small financial institutions completely get rid of these junk fees that continue to earn them billions of dollars in revenue.

- **Work to pass federal legislation to enshrine protections for consumers against overdraft and junk fees.** Congress has a lot of power to stop the greed and enormous profits that financial institutions receive from preying on the most economically vulnerable people in the country. The gridlock in Congress cannot stop members from passing meaningful legislation that people across the country desperately need, especially in the midst of the pandemic and rapidly growing inflation.

In addition to completely ending overdraft fees and other junk fees associated with bank accounts, it is imperative that the dual financial system that we have in this country is addressed. Predatory practices, products, and services thrive because financial institutions have decided to exclude many consumers of color, rendering them without access to safe, secure, and affordable products and services. This can include things products and services such as: loans (e.g., vehicle, payday, rent-to-own, higher education, mortgage, etc.), account fees (e.g., overdraft, minimum deposit and balance), debt collection practices that exploit the financially vulnerable, prepaid cards, and discriminatory insurance practices. These services have exorbitantly high interest rates, fees, and terms that make repayment difficult. In order to end this dual financial system, Congress needs to work with the appropriate agencies to ban all predatory financial products and services. An example of this would be protecting the Consumer Financial Protection Bureau and expanding the agency's power to regulate in this regard.

Conclusion

We are at a crucial moment in the country's financial history. For far too long, banks have relied on a revenue stream from overdraft fees that has come at the expense of the consumers they are entrusted to serve. It is critical that Congress and the Biden-Harris Administration work to ease the burden that consumers bear by being charged bank fees such as overdraft fees.

Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Committee, I appreciate the opportunity to testify before this Committee to share my views and I am happy to answer any questions.

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[15] https://www.citigroup.com/citi/news/2022/220224a.htm&sa=D&source=docs&ust=1648158270725467&usg=AOvVaw1rE1UxZ_yWicslN8YhdYQ4

Testimony of Paul Kundert, President & CEO,
University of Wisconsin Credit Union (dba UW Credit Union)

Before the House Financial Services Committee,
Subcommittee on Consumer Protection and Financial Institutions

Hearing: "The End of Overdraft Fees?
Examining the Movement to Eliminate the Fees Costing Consumers Billions"

March 31, 2022

Chairman Perlmutter, Ranking Member Luetkemeyer, and honorable members of this Subcommittee, thank you for this opportunity to present testimony on behalf of my organization, the UW Credit Union, at this hearing on the vital topic of the movement to reduce or eliminate overdraft fees.

About UW Credit Union

UW Credit Union is a Madison, Wisconsin based credit union serving approximately 310,000 member consumers primarily located in the Madison and Milwaukee areas. As of June 30, 2021 UW Credit Union ranked 10th among federally insured depositories reporting Wisconsin branch deposits. With assets of approximately $4.8 billion, we have made it a focus to provide our members with affordable checking account services, supporting approximately 244,000 checking accounts. In number of checking accounts reported, we rank 39th among all federally insured credit unions in the U.S. as of September 30, 2021.[1] As a consumer-focused financial institution, we advanced more than $1 billion in consumer credit and approximately $2 billion in residential mortgage credit in 2021.

Small Dollar Loan Options

In addition to auto loans, credit cards, student loans, and home equity loans, we also provide members with small-dollar credit products. These include our Reserve Lines of Credit, which are obtained with an application and can be linked for overdraft protection, and Paycheck Advance, which is a revolving line of credit up to $500 that acts as a short-term, emergency loan without the usual credit check or loan application process. Even with these types of small-dollar credit loan options, we believe an appropriately structured and priced overdraft program provides a valuable source of small-dollar credit to our members.

As a not-for-profit credit union, we believe our mission is to improve the financial well-being of our members. This mission led us to introduce account overdraft services more than 20 years ago to provide a means for paying member withdrawal requests rather than rejecting them. It has also led us to revise our practices as consumer use and our understanding have evolved. This included significant changes in our overdraft practices in 2010 and again in 2021.

Introduction of Overdraft Program

In 2001 we implemented a program in which the credit union would pay account overdrafts for members within the parameters of the program rather than return items for non-sufficient funds. The

[1] Call report data published by the National Credit Union Administration (NCUA), September 30, 2021.

program provides between $200 and $600 of discretionary overdraft advances based on the type of checking account.

We viewed the program positively for our members as it advanced funds in the form of a negative checking account balance and helped the member avoid downstream costs they would incur from a bounced check or returned ACH debit. While internet-based online banking access had been introduced by 2001, most consumers at that time still relied on their own check register and monthly paper statements and account notices sent via U.S. mail to track their account balances. We initially conceptualized the program from the standpoint of preventing a member from inadvertently bouncing a check as a result of an inaccurate account balance in the member's check register. From the inception of the program, we intentionally did not approve one-time debit card transactions that would result in the creation of overdrafts. We reasoned that these potential overdrafts were preventable, and therefore didn't save the member the time and expense of dealing with a returned check.

Over the years we observed an increase in the use of the overdraft program even as the expansion of online tools made it easier for our members to keep track of their account balances. In hindsight, we believe members began to utilize the program to meet short-term financial needs. Today we understand the growing income disparity that was developing in the early 2000s, followed by the Great Recession in 2008 and 2009. In summary, we observed growing utilization of the program by our members.

Program Reform in 2010

When the Federal Reserve published an update to Regulation E in 2009, it led us to re-examine our overdraft program. By that time, we had nine years of experience with the program and how it was being used by our members. About that time, too, a number of consumer groups were questioning the value of some overdraft programs and reinforcing the notion that overdraft fees most often fall on those least able to pay them. As a result, we again reviewed our overdraft program and made changes consistent with our mission to improve the financial well-being of our members.

We set our systems not to charge a fee if the account is overdrawn by only a de minimis amount (up to $10). Then we set a limit of one fee per day, so if four checks bounced in a single day, for example, we would charge only one fee, not four. We also affirmed to our membership that we would not ask them to opt-in to pay overdraft fees related to one-time debit card transactions. We do not authorize debit card transactions when the account does not have the funds available. Finally, we do not add any additional daily fee for an account lapsing into a negative status (fee stacking). Prior to the revised Regulation E taking effect in 2010, many financial institutions were asking their customers to opt-in to pay debit card overdraft fees. Our approach stood apart as noted in a February 2010 *New York Times* story, "Banks Apply Pressure to Keep Fees Rolling In."[2] We also began to publish on our website a plain language summary of all of our account overdraft practices.

We thought these changes were in the best interest of our members, and in fact, we saw a significant decline in overdraft fee income after these changes were made. Following these changes, we averaged about $12.50 per checking account per year in overdraft and nonsufficient funds (NSF) fees when we understood the industry average was about $80 per account per year.

[2] Andrew Martin and Ron Lieber, "Banks Apply Pressure to Keep Fees Rolling In," New York Times, February 22, 2010, https://www.nytimes.com/2010/02/23/your-money/credit-and-debit-cards/23fee.html.

Account Technology Tools to Avoid Overdrafts

In 2010 we also introduced tools in our online banking app which permitted members to set up low balance or overdraft text and email alerts and a feature which allows the member to view their overdraft preferences online. In 2011, we added a feature called "pending balance," which permitted the member to view a projection of their future account balance based on recurring transactions and pending items. Using scheduled bills and payments and recurring transactions, the app projects the future account balance showing a forecasted daily balance. Members can increase the accuracy of this projected balance by adding additional pending items, such as recurring income or expenses. This tool made it easier to anticipate days when the account balance might be low and had the potential to become negative.

Introduction of Safe Account in 2018

In 2018, we introduced our Clear Account, which includes no fees for overdrafts or nonsufficient funds (NSF), no minimum balance requirements, surcharge-free ATMs, and federal deposit insurance. It provides a simple, paperless experience to pay bills and make purchases through free debit cards. There is no monthly fee for a Clear Account when members use direct deposit or mobile deposit. Otherwise, there is a $5 fee per month. After we submitted an application in 2021, UW Credit Union's Clear Account was officially certified by the national Cities for Financial Empowerment Fund (CFE Fund) as meeting the Bank On National Account Standards (2021-2022).[3]

Also in 2018, we introduced our Encore Account, which is an account option for those who may have had their checking account closed by another financial institution. Unpaid excessive overdraft fees can be a difficult financial hardship to overcome, and when consumers' accounts are closed by financial institutions, it can be difficult for them to obtain a traditional checking account in the banking system. This specialized account is available to those who need a second chance and are looking to rebuild their finances. Encore is a low-fee option designed to give a fresh start. There is a $5 monthly fee with direct deposit or mobile deposit (otherwise, $10 monthly). There are no other fees. After one year of successfully managing an Encore Account, the member has the option to upgrade to our other full feature checking accounts which offer increased flexibility and features.

Reduction of Fee to $5 in 2021

On July 13, 2021, we reduced our remaining overdraft and NSF fee from $30 to $5. Due to potential leadership changes at the CFPB, overdraft fees were again frequently the subject of financial industry news throughout 2020 and 2021. Also during this time we witnessed social unrest that prompted organizations like ours to think more deeply about racial equity and to review business practices from an equity point of view. These discussions led us to seek out research such as the Financial Health Network's U.S. Financial Health Pulse: 2020 Trends Report[4] and The FinHealth Spend Report 2021[5] which showed that lower income households, and particularly Black and Latinx households, with accounts were also far more likely to report having over drafted than White households (1.9 times more

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[3] Cities for Financial Empowerment Fund, Bank On National Account Standards (2021-2022), https://cfefund.org/bank-on-national-account-standards-2021-2022/.

[4] Financial Health Network, "U.S. Financial Health Pulse: 2020 Trends Report," https://finhealthnetwork.org/research/u-s-financial-health-pulse-2020-trends-report/.

[5] The FinHealth Spend Report 2021, "What Financially Coping and Vulnerable Americans Pay for Everyday Financial Services," https://finhealthnetwork.org/research/finhealth-spend-report-2021/.

likely and 1.4 times more likely, respectively), contributing to the disproportionate financial costs borne by people of color. We didn't have any reason to believe that our own account data would represent a different pattern. We also had conducted a review of our institution's costs in providing overdraft services. These costs included the opportunity cost of advancing funds, the write-off of balances never collected, and the costs associated with communication and collection efforts. We found for our institution that a $5 overdraft fee was more approximate to the cost of providing the services. In short, our review led us to believe that a $5 fee per overdraft, limited to one fee per day, would be a sustainable structure for us. We now project our overdraft fee income per checking account will be about $2.50 per account annually. This represents a significant cumulative savings in would-be fees compared to a recently reported industry average of $61.15.[6] Given the size of our checking account portfolio, this represents a total of about $14 million in 2022 alone.

Competition in Financial Services Overdraft Practices

We have tremendous satisfaction knowing that we are doing the right thing but have been surprised that over the years other financial institutions in our markets have not felt enough competitive pressure to match our approach in overdrafts. The banking business is usually highly competitive in most every way, with each financial institution hustling to win consumer approval through perks, special services, rates, and catchy advertisements. Part of this might be explained by the fact that the most economically disadvantaged people in our communities, often people of color, may not have the spare time to shop around for alternatives nor the clout to move the financial industry.

With less overdraft income than similarly sized financial institutions, we've had to adapt by developing increased operating efficiency, as borne out in benchmark comparisons. We also enjoy very high rates of account retention and very high member satisfaction ratings. In this way, there has been a business reward for our commitment to equity in overdraft practices.

One challenge in evaluating the competitiveness of overdraft programs continues to be the lack of information available. It's difficult for industry experts to evaluate the reasonableness of overdraft programs or compare between institutions, and even more difficult for consumers to evaluate the components of overdraft programs in their financial decisions.

There is an emerging standard of value in the Bank On initiative, but for traditional accounts with check writing functionality, there is no established standard consumer disclosure, like the maximum amount you could be charged per day in overdraft charges. The Pew Model Disclosure Box for Checking Accounts[7] is the only one I'm aware of, and it hasn't been widely adopted. At UW Credit Union, we adopted it voluntarily in 2012.

For industry observers comparing overdraft revenue between institutions, it is difficult because it's not clear to what extent the institution's revenue is driven by the scale of its service to moderate- and low-

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[6] Consumer Financial Protection Bureau, "Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors," Data Point No. 2021-11, https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf. (Noted on page 6 are credit union averages of $42.33 annual overdraft revenue per account, $17.05 annual NSF income per account, and $1.77 annual sustained negative balance fee per account for a total average of $61.15.)
[7] Pew's Model Disclosure Box for Checking Accounts, https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/who-reads-40-pages-of-disclosures.

income consumers or is a product of its overdraft practices and the fees it charges. Comparisons based on overdraft fees as a percent of non-interest income often reveal more about the diversity of revenue than fairness in overdraft practices.[8]

Next Steps

We are encouraged in the past several months to observe more institutions making positive changes in overdraft services for consumers. Some appear to represent true reform while others seem to be designed to give the appearance of reform. Whether it is driven by regulatory concern or competitive market forces isn't yet clear, but it is an encouraging trend.

Greater transparency in institution-level regulatory reporting of overdraft programs as well as more standardized consumer disclosures could potentially drive more equity in overdraft programs. The Pew Model Disclosure Box for Checking Accounts[9] is an example of such a standardized disclosure. Similar to the challenges consumers face in evaluating overdraft programs were the challenges consumers historically faced evaluating credit card offerings prior to the Card Act of 2009.[10] With the implementation of this act and the reduction of the number of pricing variables credit cards could offer, consumers were better able to focus on a more limited set of pricing variables and compare offers, thereby stimulating competition in the market.

When prices are fair, consumers benefit from access to the credit provided by overdraft programs. Care should be taken in considering regulatory or legislative approaches that would reduce the availability of short-term consumer liquidity.

[8] Consumer Financial Protection Bureau, "Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports," Data Point No. 2021-12, cfpb_overdraft-call_report_2021-12.pdf (consumerfinance.gov).
[9] Pew's Model Disclosure Box for Checking Accounts, https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/who-reads-40-pages-of-disclosures.
[10] H.R. 627 (111th): Credit Card Accountability Responsibility and Disclosure Act of 2009, https://www.govtrack.us/congress/bills/111/hr627/text.

WRITTEN TESTIMONY OF SANTIAGO SUEIRO, SENIOR POLICY ANALYST, UNIDOSUS

Presented at

"The End of Overdraft Fees?
Examining the Movement to Eliminate the Fees Costing Consumers Billions"

Submitted to

Subcommittee on Consumer Protection and Financial Institutions

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Good morning and thank you for the invitation. My name is Santiago Sueiro, Senior Policy Analyst at UnidosUS, formerly the National Council of La Raza—the nation's largest Hispanic[1] civil rights and advocacy organization.

Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels. For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger. From Colorado to Missouri, small towns in Texas and Florida to big cities along the coasts, our Affiliates—local community-based organizations that directly serve the Latino population—are as geographically diverse as the members on this Subcommittee.

UnidosUS publishes reports, provides testimony, and advocates on policies that protect consumers, make financial services more inclusive, and improve the financial well-being of low-income people and the Latino community. For example, we supported $500 million in funding for the Community Development Financial Institutions Fund (CDFI Fund) in the latest federal budget, as well as policies that protect consumers who receive services from the financial sector, improve pathways to becoming fully banked, and include low English proficient people and mixed-status families in the financial mainstream. Our research and reports include *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (2014); *Profiles of Latinos and Banking—Technology: A Closer Look at Latinos and Financial Access* (2015); *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color* (2019); *Latinos in Finance: Investing in Bilingual Banking and Finance Professionals (*2021); *Latinos, COVID-19, and Social Belonging: Voices from the Community* (2021); and *Closing the Latina Wealth Gap: Building an Inclusive Economic Recovery after COVID* (2021).

We are grateful that the Subcommittee on Consumer Protection and Financial Institutions is examining the relevant and timely topic of overdraft fee protections. Latinos are in a precarious moment. The federal government's response to the pandemic was critical to reducing poverty and supporting low-income people and Latinos. However, as supports such as the Child Tax Credit (CTC) expire, many find themselves struggling to make ends meet. Twelve million households are behind on their rent, with Latino renters almost twice as likely as Whites to be behind on rent.[1] In addition, over the last seven days, roughly 63 million people had difficulty covering expenses—and such stressors are not proportionately distributed; this worry afflicts 38% of Latinos, compared to 23% of Whites.[2]

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[1] The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout our materials to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. Our materials may also refer to this population as "Latinx" to represent the diversity of gender identities and expressions that are present in the community.

Furthermore, Latinos are more likely to incur overdraft fees in part because they have fewer resources at their disposal and are disproportionately represented in low-wage jobs with fluctuating work hours and high levels of income volatility. For example:

- Latinos have fewer resources to weather income shocks. The median Latino family owns just $1,527 in liquid assets,[3] compared to $3,247 for Whites.[4]
- Latinos are disproportionately represented in jobs with poverty-level wages, with 19% of Latinos earning poverty-level wages, compared to 9% of Whites.[5]
- Hispanic and Black women are more likely than White women to be among the working poor (defined as people who, despite working, live below the federal poverty level).[6]
- For many Latinas, access to child care remains out of reach; it is unaffordable, unreliable, or unavailable during the hours they work, meaning they must accept employment that offers flexible working hours.[7]
- The leisure and hospitality and construction industries have the highest share of workers—roughly 45%—who report income variations from month to month.[8] Latinos are heavily overrepresented in each of these industries, representing 22% of all workers in leisure and hospitality and 27% of all workers in construction.[9]
- Roughly 40% of Latino adults surveyed have done gig work[10] of some kind.[11]

Yet, Latinos are a major source of growing economic potential and dynamism, and their work is fueling the country's economy. When Latinos are fully included, their contributions produce significant benefits to the economy. For example, Latinos have a higher-than-average labor force participation rate, start businesses at more than double the overall rate for entrepreneurship, and saw their revenues grow an average of 25% over the last two years (compared to 19% revenue growth for White-owned businesses).[12] Furthermore, Latinos wield significant purchasing power: in 2020 Latino spending power grew to $1.9 trillion—an 87% increase from 2010.[13]

A recent survey by UnidosUS demonstrated that Latinas, in particular, deserve support from policymakers due to their exceptional economic contributions and hard work. Indeed, Latinas are one of the fastest-growing segments of business owners in the United States: our survey found that about half of all Latinas believe that owning a business is a very important part of the American Dream.[14]

To ensure equitable economic opportunity, low-income people must not be burdened with unfair and unnecessary expenses. We are therefore encouraged by recent announcements from some banks that they are reducing or eliminating overdraft and non-sufficient funds fees,[15] and we are in support of more banks reassessing their overdraft practices.

These actions suggest that overdraft fees are no longer necessary for the financial health of banks. While encouraging, the industry's actions are, in part, a result of renewed attention from regulators in addition to pressure from consumers in a competitive market. And because they are voluntary, such progress could be easily reversed if the environment or market conditions change.

For this reason, we strongly encourage policymakers to establish permanent and sustainable guardrails to ensure a competitive, fair, and reasonable financial services marketplace for low-income people, including Latinos.

Three overarching observations inform our work on overdraft fees. First, the data demonstrate that a majority of people who incur multiple overdraft fees make less than $50,000 a year.[16] Second, high overdraft and non-sufficient funds fees are a formidable barrier to financial services for under- and unbanked households. Third, a mix of careful regulations and market-driven solutions can improve access to financial products and services, resulting in win-win solutions for the industry and consumers.

Overdraft fees, by their nature, impact consumers when they can least afford an additional cost. They are also a fee that people of color incur at a higher rate than Whites. The data show that:

- The average amount charged for an overdraft increases almost every year. In 1998, the average overdraft fee was $22—as of 2021, it was at a record high of $34.[17]
- In 2019, banks charged an estimated $15 billion in overdraft fees.[18]
- Consumers who incur multiple overdraft fees make up 9% of people who overdraft but account for 80% of all overdraft fees.[19]
- Low- to moderate-income households are nearly twice as likely as higher-income households to overdraw an account.[20]
- Black and Latino households are far more likely than White households to report having overdrawn an account.[21]

Moreover, to create more inclusive economic opportunities, it is critical to expand access to banking for those outside of the financial mainstream. As of 2017, roughly 38 million people were under- or unbanked, with 29% of Latinos under- or unbanked, compared to 16% of Whites.

The most common reasons that consumers report for lacking a bank account are related to costs. Some 34% of those who remain unbanked say they do not have an account because fees are too high, 31% say fees are too unpredictable, and 49% indicate that they do not have enough money to meet minimum balance requirements.[22]

Improved consumer protections for overdraft and non-sufficient funds fees would help to address some of these barriers and may increase access to financial services for underserved communities. Thankfully, there are specific steps we can take to ensure that financial institutions can and do offer high-quality and affordable products to everyone. Two policy-change pathways would help to make the marketplace fairer and more dynamic.

First, excessive fees should be limited by regulatory approaches, which could include, limits on multiple fees being assessed for the same incident, caps on total fees, and reasonable grace periods to cure an overdraft. Legislation, such as the "Overdraft Protection Act of 2021" introduced by Congresswoman Maloney last year, would limit abusive overdraft fees by requiring that consumers opt-in to overdraft coverage fees and limit such fees to one per month and six in a calendar year.[23] In addition, the Consumer Finance Protection Bureau (CFPB) is currently taking comments on a promising Request for Information (RFI) that focuses on fees which are generally not subject to market competitive forces (so-called "junk" fees), which includes overdraft and similar fees.

Second, we should deepen our support for institutions that offer more inclusive and affordable banking products. Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), credit unions, and online banks all offer inclusive and affordable products, and investments in these institutions can create market-wide pressure to lower fees. Research shows, for example, that credit unions and online banks generally charge less than traditional banks in overdraft fees, monthly maintenance fees, and ATM fees.[24]

CDFIs, MDIs, and credit unions, in particular, have stronger incentives than do traditional banks to serve the needs of lower-income communities, and they are often more deeply connected to these communities. We recently spoke with several credit unions that hire bilingual staff, specifically seek to open branches in lower-income areas with high concentrations of Latinos, and ensure that materials are translated into Spanish and other common languages.

Congress should therefore consider increasing appropriations funding for the CDFI Fund program. The program invests hundreds of millions of dollars a year in capital and technical assistance support to CDFIs, allowing them to grow and serve more low-income consumers. However, the CDFI and MDI field is too small to apply meaningful pressure on the market. Additional supports are necessary to grow the field to a meaningful level.

The "Advancing Technologies to Support Inclusion Act" is one such support and would invest $6 billion in CDFIs and MDIs to upgrade their technology capabilities. This would significantly improve their ability to compete with online banks and big banks that already offer sophisticated FinTech products.

Finally, policymakers should do more to incentivize banks to sign on to Bank On national account standards, and, for their part, banks should do more to promote these no-overdraft, comparatively low-cost accounts in underserved communities.[25] Approximately 100 banks (with more than 39,000 branches) currently offer Bank On certified accounts.[26]

Some financial institutions have called for a "race to the top" business strategy as the path forward for the banking sector. We agree with that sentiment: investing in low-income people by providing affordable and high-quality products will allow banks and communities to grow together.

If we create a banking system built on trust and loyalty, and one that invests in the longer-term potential of low-income people and Latinos, we will be one step closer to creating a fair, inclusive, and thriving economy.

We are grateful that the subommittee is taking up this issue, and look forward to your questions.

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[1] Center on Budget and Policy Priorities (CBPP), *Tracking the Covid-19 Economy's Effects on Food, Housing, and Employment Hardships* (Washington, DC: CBPP, August 2020), https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and.

[2] Ibid.

[3] According to the JPMorgan Chase & Co. Institute, liquid assets are the sum of balances in one's checking, prepaid debit cards, savings, money market, and certificates of deposit accounts.

[4] Diana Farrell, et al., Racial Gaps in Financial Outcomes: Big Data Evidence (New York, NY: JPMorgan Chase & Co. Institute, April 2020), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-race-report.pdf

[5] David Cooper, "Workers of Color Are Far More Likely to Be Paid Poverty-Level Wages than White Workers," *Working Economics* (blog), Economic Policy Institute, June 21, 2018, https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/.

[6] U.S. Bureau of Labor Statistics (BLS), *Women in the Labor Force: A Databook*, Report no. 1092 (Washington, DC: BLS, April 2021), https://www.bls.gov/opub/reports/womens-databook/2020/pdf/home.pdf.

[7] Sol Espinoza, Meggie Weiler, and Agatha So, *Closing the Latina Wealth Gap: Building an Inclusive Economic Recovery after COVID* (Washington, DC: UnidosUS, April 2021), http://publications.unidosus.org/bitstream/handle/123456789/2150/unidosus_closingthelatinawealthgap.pdf?sequence=5&isAllowed=y.

[8] Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2019* (Washington, DC: Board of Governors of the Federal Reserve System, May 2020), https://www.federalreserve.gov/publications/2020-economic-well-being-of-us-households-in-2019-income.htm.

[9] Aaron Klein and Ariel Gelrud Shiro, "The Covid-19 Recession Hit Latino Workers Hard. Here's What We Need to Do," *How We Rise* (blog), Brookings, October 1, 2020, https://www.brookings.edu/blog/how-we-rise/2020/10/01/the-covid-19-recession-hit-latino-workers-hard-heres-what-we-need-to-do/#:~:text=Latinos%20comprised%20about%20one%20out,in%20mining%20and%20oil%20extraction.

[10] UnidosUS defines gig worker as an independent contractor, freelance worker, or online seller, or similar, on demand work often referred to as "gig work." Some examples are Uber, Postmates, TaskRabbit, Care.com, Handy, Rover, or selling goods on Etsy and eBay.

[11] UnidosUS and Lake Research Partners survey, November 4–December 4, 2019, "Latinos and the Gig Economy," https://www.unidosus.org/wp-content/uploads/2021/07/unidosus_latinosinthegigeconomy.pdf.

[12] Marlene Orozco et al., *State of Latino Entrepreneurship* (Stanford, CA: Stanford Graduate School of Business, February 2020), https://www.gsb.stanford.edu/sites/default/files/publication-pdf/report-2020-state-of-latino-entrepreneurship.pdf.

[13] Jeffrey M. Humphreys, *The Multicultural Economy: 2021* (Athens, GA: Selig Center for Economic Growth, August 2021), https://estore.uga.edu/C27063_ustores/web/product_detail.jsp?PRODUCTID=9296.

[14] Sol Espinoza, *Closing the Latina Wealth Gap*.

[15] Rebecca Borné and Amy Zirkle, "Comparing Overdraft Fees and Policies across Banks," Consumer Financial Protection Bureau blog, February 10, 2022, https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/.

[16] Susan K. Urahn et al., *Heavy Overdrafters: A financial profile* (Philadelphia, PA: Pew Charitable Trusts, April 2016), https://www.pewtrusts.org/-/media/assets/2016/04/heavyoverdrafters.pdf

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[18] Consumer Financial Protection Bureau, "CFPB Research Shows Banks' Deep Dependence on Overdraft Fees," (Washington, DC: CFPB, December, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/

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[21] Ibid.

[22] Federal Deposit Insurance Corporation, *2017: FDIC National Survey of Unbanked and Underbanked Households* (Washington, DC: FDIC, October 2018), https://www.fdic.gov/householdsurvey/2017/2017report.pdf.

[23] *Overdraft Protection Act of 2021*, H.R. 4277, 117th Cong., sess. (June 30, 2021), https://www.congress.gov/bill/117th-congress/house-bill/4277?s=1&r=84#:~:text=Introduced%20in%20House%20(06%2F30%2F2021)&text=This%20bill%20prohibits%20a%20financial,in%20connection%20with%20overdraft%20coverage.&text=the%20consumer%20will%20not%20be,if%20such%20transaction%20is%20declined.

[24] Mitch Strohm, "Checking Account Fees Remain Costly: How to Avoid Them," *Forbes*, September 9, 2021, https://www.forbes.com/advisor/banking/checking-account-fees-survey/.

[25] Cities for Financial Empowerment Fund, *Bank On National Account Standards (2021–2022)* (New York: Cities for Financial Empowerment Fund), https://2wvkof1mfraz2etgea1p8kiy-wpengine.netdna-ssl.com/wp-content/uploads/2020/10/Bank-On-National-Account-Standards-2021-2022.pdf.

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Testimony of Professor Todd Zywicki Presented to

The House of Representatives Committee on Financial Services

Subcommittee on Consumer Protection and Financial Institutions

"The End of Overdraft Fees? Examining the Movement to

Eliminate the Fees Costing Consumers Billions"

Thursday, March 31, 2022

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Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Committee:

I am Todd Zywicki. I am George Mason University Foundation Professor at Antonin Scalia Law School and Research Fellow of the Law & Economics Center. From 2020-2021 I served as the Chair of the CFPB's Taskforce on Consumer Financial Law and from 2003-2004 I served as the Director of the Office of Policy Planning at the Federal Trade Commission. I am also co-author of *Consumer Credit and the American Economy* (Oxford 2014) and the author of four articles on the economics and regulation of bank overdraft protection, including *The Economics and Regulation of Bank Overdraft Protection*, 69 WASHINGTON & LEE L. REV. 1141 (2012) and *Payday Lending, Bank Overdraft Protection, and Fair Competition at the Financial Protection Bureau*, 33 REV. BANKING & FIN. LAW 235 (2013), co-authored with former Comptroller of the Currency Robert Clarke. I appear voluntarily today in my personal capacity and do not speak on behalf or represent any other party.

I appear today to address the issue of bank overdraft protection, its usage by consumers, and the potential costs and benefits of new or additional regulations on its usage and access by consumers. Most regulatory and legislative attention has focused on the use of overdraft protection by more frequent and heavier users of the product, such as those who use overdraft protection ten or more times per year and those consumer will be the focus of my attention today. This has been an area of regulatory scrutiny for some time and the new CFPB Director Rohit Chopra has stated that fees charged for usage overdraft protection as an example of a "junk fee" on consumer financial products that financial institutions use to “feast on their customers.”[1] Congress has also been considering legislation that would impose new limits on consumer use of overdraft protection and the fees that could be assessed in connection with those services.[2]

To be sure, all consumers—myself included—are often frustrated by dealing with banks and the various fees and complexities associated with modern consumer financial products. But exasperation is not a sound basis for policy and merely labeling these charges as “junk fees” obscures the more nuanced reality of the role they provide in efficiently pricing the risk of consumer financial services, increasing access to historically-underserved individuals and communities, and preventing inefficient and unfair cross-subsidies among various consumers.[3] Ill-considered new regulations on overdraft fees not only could harm consumers overall but by limiting the ability of banks accurately to price the risk of offering these services would have the greatest adverse effect on responsible lower-income, younger, higher-risk, and other marginal consumers who would likely find themselves facing higher bank fees, higher mandatory minimum balance requirements, and reduced access to banking services in general.

Reduced revenue from overdraft protection would also have direct safety and soundness implications for financial institutions, but would have a particularly large adverse effect on many smaller institutions, such as community banks and credit unions. Larger mega-banks offer a wider variety of products and services, thus they will have access to multiple revenue sources to offset any reduction is overdraft protection

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[1] *See* Rohit Chopra, *Prepared Remarks of CFPB Director Rohit Chopra on the Junk Fees RFI Press Call* (Jan. 26, 2022), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-the-junk-fees-rfi-press-call/.
[2] *See* H.R. 4277 “Overdraft Protection Act of 2021,” 117th Congress (June 30, 2021).
[3] *See* Howard Beales and Todd Zywicki, *Junk Fees or Junk Policy?*, THEHILL.COM (March 21, 2022), *available in* https://thehill.com/blogs/congress-blog/politics/599085-junk-fees-or-junk-policy?rl=1.

revenues. Smaller institutions, by contrast, are in general appear to be more dependent on fees generated from the provision of overdraft protection and will have more difficulty recovering lost fee revenues without significant harm to their competitive position (such as by reducing access to free checking).

Assessing the desirability of any new consumer protection regulation on overdraft protection or any other issue requires a three-step analysis that asks the following questions[4]:

(1) Is there a market failure?

(2) Is there a feasible solution to address the market failure?

(3) Will the benefit of the proposed intervention exceed the costs, including all unintended consequences associated with the intervention?

Applying this analysis to the question of new regulations on overdraft protection reveals the complexities and tradeoffs that are associated and suggest care to ensure that well-intentioned new regulatory interventions do not harm consumers, especially more vulnerable consumers.

Historically, overdraft protection was a courtesy that banks reserved only for its most elite customers, typically high-income professionals and others who had personal connections to bank managers.[5] Ordinary consumers, by contrast, were typically forced to deal with the inconvenience, embarrassment, and in some instances threat of criminal prosecution, of bounced checks, NSF fees, and declined payments. Over time, however, financial institutions developed automated overdraft protection programs that have

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[4] *See* CONSUMER FINANCIAL PROTECTION BUREAU, 1 TASKFORCE ON FEDERAL CONSUMER FINANCIAL LAW REPORT 285.
[5] *See* Todd J. Zywicki, *The Economics and Regulation of Bank Overdraft Protection*, 69 WASH. & LEE. L. REV. 1141 (2012).

reduced the risk and cost of providing overdraft services and eliminated the traditional subjectivity and selectivity of discretionary overdraft protection programs, thereby expanding eligibility to virtually all bank customers regardless of income or status. Today, 92.9% of banks and 60.9% of credit unions operate overdraft programs and at those financial institutions that offer overdraft programs, decisions are largely automated.[6]

In this testimony I will briefly examine four issues: (1) Are there information problems with consumer understanding about overdraft protection that could be improved by new disclosure requirements and the like, (2) Why do consumers use overdraft protection, (3) What are the characteristics of consumers who use overdraft protection frequently, and (4) What would be the potential costs or harms to consumers from new regulations that would restrict their access to overdraft protection usage.

I. Do Consumers Understand Overdraft Fees and When They Incur Them?

Director Chopra has suggested a problem with overdraft fees and other comparable fees (such as late fees on credit cards) is that they are "back-end" fees that consumers cannot fully appreciate when they shop for financial services and cannot easily avoid incurring. Similarly, the Overdraft Protection Act of 2021 provides for new and revised disclosures by banks of fees related to overdraft transactions, including new required disclosures at the time of account opening and ongoing alerts and notifications with respect to ongoing usage of overdraft services and fees those services involve.

[6] *See* CONSUMER FINANCIAL PROTECTION BUREAU, DATA POINT: CHECKING ACCOUNT OVERDRAFT AT FINANCIAL INSTITUTIONS SERVED BY CORE PROCESSORS 3 (Dec. 2021) (Data Point No. 2021-11).

It is generally accepted that disclosure requirements today for consumer financial services are unfathomably bewildering and multitudinous.[7] *Ceteris paribus*, in making any decision about a consumer financial product or service, more information is generally preferable to less and information-based regulations that respect consumers' preferences and different circumstances are generally superior to prescriptive rules that ban products or dictate prices or other substantive terms.[8] But as with most good things in life, too much information can overload of our time and attention, bury important information in a sea of trivialities, or provide generally useful information at wrong time when it is not relevant to the particular decision at hand. These limits on consumer attention and interest raise the question of how much information consumers should receive specifically about overdraft protection at the time of account opening and how much information should be required to be provided to them on an ongoing basis.

When a consumer opens a new bank account, he or she is presented with an intimidating stack of papers to read and process, of which terms and conditions of overdraft programs is just one of those provisions. How important are those disclosures to the average consumer relative to other disclosures? To begin with the obvious point—the overwhelming majority of bank consumers never or rarely overdraft their accounts.[9] According to analysis by the CFPB in 2017, for example, 66.6% of accounts in their sample never overdrafted their account and another 14.5% overdrafted just 1-3 times during that time. In addition, inadvertent overdrafters are often granted fee waivers upon

[7] *See* CFPB TASKFORCE REPORT, *supra* note 4, at Vol. 1, Ch. 7.
[8] *Id.* at 296.
[9] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5.

request.[10] This suggests that for roughly 80% of consumers, up-front disclosure about specific terms and conditions of a bank's overdraft program would provide little benefit but could run the risk of distracting them or making it more difficult for those consumers to focus on the terms and conditions they do care about, such as customer service, branch locations, security and fraud protection, monthly fees, interest rates, mandatory minimum balance requirements, debit card terms, mobile banking, or other attributes.[11] In addition to these factors, many consumers today also say they value information about environmental sustainability, diversity in bank leadership, and community involvement.[12]

According to one analysis, for example, most consumer can only focus on two or three criteria when shopping for a bank account information, and information about a bank's overdraft fee program ranked fifth on that list ("low or no overdraft fee" services ranked even lower for the typical consumer when shopping for a bank account).[13] Simply adding more required disclosures, especially one of minimal importance to most consumers, to the already-large stack of papers that consumers receive at account opening, therefore, is unlikely to benefit them.

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[10] *See* Jason Scott Johnston and Todd J. Zywicki, *The CFPB's Arbitration Study: A Summary and Critique*, 35(5) BANKING AND FIN. SERVS. POL'Y REPORT 9 (2016) (providing data from one regional bank on fee refunds for overdraft protection and other services); G. Michael Flores, *An Assessment of Usage of Overdraft Protection by American Consumers*, AMERICAN BANKERS ASSOCIATION 23 April 2017) (noting that 28% of all overdraft fees were waived or refunded). Flores further notes that once fee waivers and refunds are considered, even though the disclosed average fee is $35.50 per overdraft, the average *assessed* fee was $25.56. As noted below, he also finds that lower-income customers were more likely to have fees waived than higher-income consumers.

[11] *See* Lyle Daly, *Study: What Consumers Really Want from Banks*, THE ASCENT (Dec. 19, 2020), *available in* https://www.fool.com/the-ascent/research/study-what-consumers-really-want-from-banks/#:~:text=Competitive%20interest%20rates%20are%20important,giving%20back%20to%20the%20community.

[12] *Id.*

[13] *See* NOVANTAS, UNDERSTANDING CONSUMER CHOICE: A REVIEW OF CONSUMER OVERDRAFT BEHAVIORS 21 (2015). Notably, that list did not include many other relevant attributes such as quality of customer service, security and fraud protection, or environmental and social factors.

Moreover, while there has been much public and regulatory focus on the annoyance and unfairness of occasional surprise overdraft fees when someone unsuspectingly overdraws their account, surveys indicate that frequent users of overdraft protection are much more active in monitoring their accounts to check their balances and outstanding transactions than those who rarely use overdraft.[14] As a result, those who overdraft their accounts more frequently (more than 10 times per year) state that when they overdraft, they know their account balance is running low and either "hoped" an expected deposit would post to their account before a purchase they made or knew they were running low and used overdraft protection to make sure their payment cleared.[15] Few consumers who use overdraft protection frequently, therefore, seem to be doing so because they are unaware of either the risk or expected cost of overdrafting, but instead are doing so as a calculated gamble with respect to the timing of a credit and/or debit or as insurance to make sure a payment goes through without being declined. Enhanced real-time alerts (which many financial institutions offer already) could assist some consumers from incidentally overdrafting their accounts but they are unlikely to be of particular value to frequent users of overdraft protection for whom most overdrafts dod not come as a complete surprise.

Moreover, the observation that a disproportionately large amount of overdraft usage and fees are generated by a disproportionately small number of consumers is not unique to overdraft protection usage. Such patterns of consumer behavior are common across retail industries, including retail banking, and is known as the Pareto Principle or

[14] *See* INDEP. CMTY. BANKERS OF AM., THE ICBA OVERDRAFT PAYMENT SERVICES STUDY (2012); NOVANTAS, *supra*, at 6.
[15] NOVANTAS, *supra*, at 6.

the "80-20 Rule."[16] For example, an analysis that I conducted with Michael Flores of one community bank found that 83 percent of checking account balances are provided by only 14 percent of customers.[17] Yet, at the typical bank the interest rate paid on deposits by high-balance customers are usually only slightly higher than for low-balance customers despite the higher profitability to the bank from high-balance customers and the resulting cross-subsidy from higher-balance customers to lower-balance.[18]

II. Why Consumers Use Overdraft Protection

Before taking any regulatory actions that could reduce the availability of overdraft protection to consumers, such as flat limits on the number of overdraft transactions a consumer could make in a given time period, it is crucial to understand why consumers use overdraft protection. As noted, available evidence suggests that consumers who use overdraft frequently do so knowing they have or may have insufficient funds to cover the payment. Consistent with that observation, available evidence also suggests that consumers use overdraft protection to purchase goods and services that are of high and urgent value and for which the inability to obtain necessary funds to make the transaction could impose significant hardship on the consumer and his or her family.

To test the proposition, Michael Flores and I obtained data from one mid-sized regional bank that provided Merchant Category Classification (MCC) codes for all customer transactions for which consumers used overdraft protection to make a purchase

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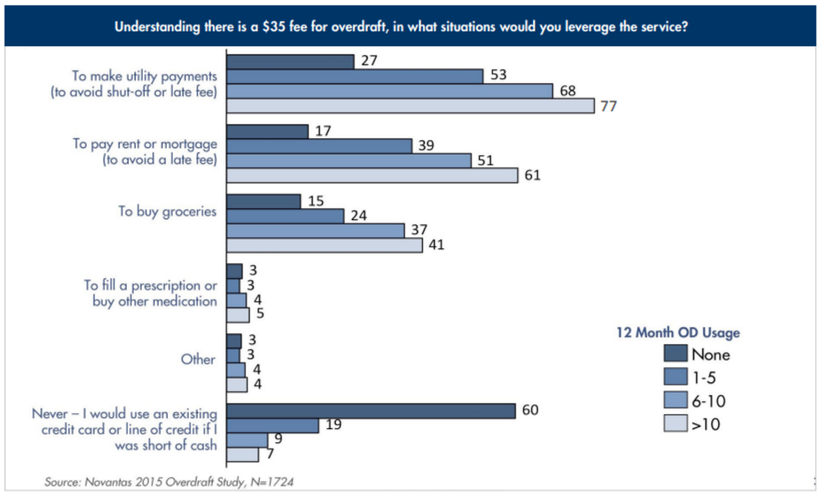
[16] G. Michael Flores and Todd J. Zywicki, *Commentary on CFPB Report: Data Point: Checking Account Overdraft* (working paper Sept. 2014), *available in* http://ssrn.com/abstract=2499716
[17] *Id.*
[18] As discussed below, leaving aside efficiency considerations, cross-subsidies could raise concerns about regressive distributional effects if they were seen to systematically disadvantage lower-income customers at the expense of higher-income. This does not seem to be the case with overdraft protection usage.

between August 1, 2012 to July 31, 2013.[19] We found of the 380 categories in the MCC code, the top 11 categories accounted for 60 percent of the transactions and 55 percent of the principal amount withdrawn. Based on these MCC codes, it appears that the majority of overdraft usage occurred in transactions arguably recognized as necessities, such as groceries, gasoline, utility bills, insurance payments, and the like. Grocery stores, the most commonly-used location, comprised over $2 million dollars and 14% of all transaction dollars. The category of Automated Fuel dispensers was the second most common location ($1.1 million and 7% of transaction dollars) and telephone services was third.

Consumer surveys confirm the inference that most overdraft usage is for more important purchases. According to Novantas consulting, consumers who use overdraft protection more frequently are more likely to indicate that they use overdraft protection to make important purchases such as utility payments, rent or mortgage, or to buy groceries.[20] By contrast, only 7 percent of frequent overdrafters said they would use a credit card to make these purchases compared to 60 percent of those who never overdraft, which reflects the limited options available to those who use overdraft protection frequently.

[19] *See* G. Michael Flores and Todd J. Zywicki, *Commentary: CFPB Study of Overdraft Programs*, SSRN.COM at *8 (Nov. 6, 2012), *available in* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2349819.
[20] *See* NOVANTAS, *supra* note, at 13.

Consumers — especially regular overdraft users — see value in overdrafts, even when knowledgeable of overdraft fees.



The fact that overdraft protection is often used for particularly important payments, such as utilities, rent, groceries, or gasoline, also highlights the flaw in a common criticism of overdraft protection, namely that the median size of transactions covered by overdraft protection are often relatively small compared to the value of the transaction to be covered. But it should be obvious that the dollar value of a particular transaction is at best an imperfect measure of the value of that transaction *to the consumer*. If, for example, a consumer would be unable to buy medicine, baby formula, groceries, or gasoline to get to work, the dollar value of the transaction hardly measures the true value of that service. Similarly, if overdraft protection is used to pay a utility bill, the cost of *not* paying the bill—late fees, possible termination of service, and other fees associated with reinstating ones' account—could far exceed the cost of the unpaid bill itself.

Frequent users of overdraft protection are also much more likely to report that the availability of overdraft protection is "extremely" or "somewhat" valuable than those who rarely or never use overdraft protection.[21]

In addition to survey evidence, consumer behavior also reveals the demand that frequent users of overdraft protection place on access to the product. In 2009, the Federal Reserve promulgated amendments to Regulation E, to require consumers to affirmatively "opt-in" to the usage of overdraft protection for ATM and point-of-sale debit transactions.[22] Reports following the issuance of the rule indicated consumers who used overdraft protection most regularly prior to the rule were much more likely to provide opt-in authorization than less-frequent users.[23] Combined with other data reported above that those who use overdraft protection most frequently monitor their account balances and pending transactions very closely, that they are more likely to use overdraft protection for especially urgent and important expenses, this finding that those who use overdraft protection more frequently opted-in to protection suggests that they do so with a high degree of knowledge of the cost of the service and the alternative options available to them at the time, and that they place a high value on access to overdraft protection.

III. What are the Characteristics of Those Who Use Overdraft Protection?

The foregoing suggests that consumers who use overdraft protection more frequently place a high value on access to the service and do so in order to make especially urgent and important payments, including the purchase of necessities such as

[21] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5, at 1173 (citing findings of 2011 Raddon Financial Group Survey).
[22] 12 C.F.R. §205.17.
[23] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5 (citing data from JP Morgan and Moebs).

groceries and gasoline and for other payments such as utility. Frequent users of overdraft protection also state that they would be much less likely to use a credit card to meet urgent liquidity needs than those who never or rarely use overdraft protection.

An analysis of the economic characteristics of heavy overdraft users illuminates why frequent users of overdraft place such a high value on the service and why they do not use less-expensive alternatives such as credit cards. Frequent users of overdraft protection share two important characteristics that differentiate them from those who rarely or never use overdraft protection: first, they typically have impaired credit and limited access to mainstream types of short-term credit (especially credit cards) and second, they appear to be relatively high-income but have a high need for short-term liquidity as a result of high and relatively unstable volatility in their household budget flows.

A. Impaired Credit and Limited Credit Options

Frequent users of overdraft protection are more likely to have impaired credit and reduced access to alternative forms of credit, such as credit cards. And where these consumers actually have credit cards they are much more credit-constrained and less likely to have available credit lines than others.[24] Finally, while many financial institutions offer the option of linking a consumer's debit account to a savings account or bank line of credit, both of which would be less expensive than usage of overdraft protection, for many heavier users of overdraft protection these options are unrealistic either because of a lack of adequate savings or an inability to be approved for a bank line of credit.

[24] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5, at 1172-74.

As noted, frequent users of overdraft protection are significantly less likely to state that they would use a credit card to meet short-term budget shortfalls than those who never or rarely use overdraft protection. This finding is explained by the relatively poor credit status of most frequent overdrafters and thus their lack of access to alternative short-term credit options.

Surveys of consumer use of overdraft reveal that consumers who use overdraft more frequently are more likely to describe themselves as having low credit quality and limited credit alternatives.[25] According to one survey, only 7% of elevated users of overdraft protection described their credit rating as "excellent" compared to 70% who described their credit rating as "fair" or "poor." By contrast, 74% of non-users of overdraft protection described their credit rating as "excellent" or "good" and only 9% considered their credit rating to be "poor."

More recent research by the CFPB confirms these findings that consumers who rely on overdraft protection more heavily do so in large part because of a lack of access to more attractive and less-expensive options, such as credit cards.[26] Drawing on data pulled from roughly 240,000 accounts, the CFPB found a strong correlation between a consumer's credit score and overdraft usage. For example, consumers with zero overdrafts or non-sufficient funds (NSF) transactions had an average credit score of 747, whereas consumers with 10-20 transactions had a credit score of 585 (borderline deep subprime) and those with 20 or more overdraft/NSF fees had an average credit score of 563 (very deep subprime).[27]

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[25] *Id.* (summarizing survey by Raddon Financial Group).
[26] CONSUMER FINANCIAL PROTECTION BUREAU, DATA POINT: FREQUENT OVERDRAFTERS (Aug. 2017).
[27] *Id.* at 16, Table 2.

The CFPB's findings confirm those of earlier studies that had found that the only accurate predictor of the propensity of a consumer to overdraft is their credit score and all other demographic income is non-predictive, including income.[28]

Consistent with this observation, another study found that 54% of those who self-identified as having "poor credit" said access to overdraft protection was "extremely important" and they would be "extremely upset" if overdraft protection was eliminated.[29] By contrast of those with "excellent credit," only 18% said that access to overdraft protection was "extremely important' and only 20% said they would be "extremely" upset if it were eliminated. Moreover, 41% of lower-income customers in the survey stated they would be "extremely upset" if access to overdraft protection was eliminated.

Frequent users of overdraft are also much less likely to have credit cards than those who never overdraft: only 49% of those who overdraft more than 20 times per year ("Very Frequent" users) have credit cards and only 57% of those who overdraft 10-20 times per year ("Moderately Frequent"), compared to 87% of those who say they never overdraft ("Non-Overdrafters") and 73% of those who overdraft 1-3 times annually ("Infrequent"). Credit lines are also much more constrained, as Very Frequent users state they have only $225 of available credit and Moderately Frequent users have $521. By contrast, Non-Overdrafters have $14,100 in available credit and Infrequent overdrafters

[28] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5, *supra* note, at 1164. Notably, credit scores are only moderately correlated with income and uncorrelated with most other demographic factors. *See* THOMAS A. DURKIN, GREGORY ELLIEHAUSEN, MICHAEL E. STATEN, AND TODD J. ZYWICKI, CONSUMER CREDIT AND THE AMERICAN ECONOMY (2014); *see also* Rachael Beer, Felicia Ionescu, and Geng Li, *Are Income and Credit Scores Highly Correlated?*, FEDS NOTES (Aug. 13, 2018), *available in* https://www.federalreserve.gov/econres/notes/feds-notes/are-income-and-credit-scores-highly-correlated-20180813.htm; FEDERAL RESERVE BOARD, REPORT TO THE CONGRESS ON CREDIT SCORING AND ITS EFFECTS ON THE AVAILABILITY AND AFFORDABILITY OF CREDIT (Aug. 2007), *available in* https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/differential.htm.

[29] *Id*. (discussing findings of 2011 survey by Baselice & Associates).

have $3000 in available credit. Very Frequent and Moderately Frequent users are twice as likely to as Non-Overdrafters to have "thin file" credit reports or no credit report at all.

Reducing access to overdraft protection would have a direct negative effect on those who use overdraft protection frequently. As noted, frequent users of overdraft protection use overdraft protection to cover important and urgent expenses for which they have limited alternatives. There is no indication that these are disproportionately lower-income consumers, but instead appear to be middle income consumers with high budgetary volatility and limited access to credit cards and other sources of credit.

Available evidence suggests that if these consumers were to lose access to overdraft protection, many of them would be forced to turn to payday loans to make ends meet.[30] According to one consumer survey, for example, when asked what they would do if they were unable to use overdraft protection, 24% of elevated users stated they would seek a payday loan.[31] Many other respondents reported they would be unable to get money, which presumably would mean they would be unable to make the desired purchase or would suffer late fees and other penalties associated with the failure to make payments in a timely manner. A survey by the Independent Community Bankers of America also found that although consumers in general would prefer to borrow from friends and family or use a bank line of credit to meet a short-term financial need, those consumers who used overdraft protection more than 4 times in the previous 12 months ranked it first as a preferred source of short-term funds.[32]

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[30] *See* Robert L. Clarke and Todd J. Zywicki, *Payday Lending, Bank Overdraft Protection, and Fair Competition at the Consumer Financial Protection Bureau*, 33 REV. OF BANKING AND FIN. LAW 235 (2013-2014).
[31] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5, *supra* note, at 1173.
[32] *See* ICBA, *supra* note 14, at 20, Fig. 24.

Research by Federal Reserve economists Brian Melzer and Donald Morgan identified that for many consumers, overdraft protection and payday loans are close substitutes and that payday loan bans spur consumers to make greater use of overdraft protection.[33] Similarly, Morgan, Strain, and Seblani found that when a state bans payday lending, overdraft revenues (and NSF fees) increase at banks, whereas legalizing payday loans results in a decline bank overdraft fee revenues.[34]

B. Frequent Users of Overdraft Protection Have High Budgetary Volatility

A second characteristic of frequent overdraft users is that they have high budget volutility in terms of the predictability and timing of their debit and credit flows from month-to-month. When combined with their lack of access to readily0available sources of short-term credit such as credit cards, this characteristic suggests that they use overdraft protection as a short-term source of liquidity to ensure that important payments clear rather than being declined for lack of adequate liquidity. More important, there is little evidence that overdraft protection usage is related to income levels generally or that low-income consumers are more likely to use overdraft protection more heavily than higher-income. The findings of several studies generally support these findings.

The CFPB's 2017 Data Point on Frequent Overdrafters revealed findings that when taken as a composite suggest this portrayal of frequent overdrafters is accurate.[35] First, the CFPB report found that Very Frequent overdrafters made more than 4 times as many POS debit card transactions (29) then Non-Overdrafters (4.6) and twice as many as Infrequent users (14.1). But Very Frequent users actually had a *higher* level of average

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[33] *See* Brian T. Melzer and Donald P. Morgan, *Competition in a Consumer Loan Market: Payday Loans and Overdraft Credit*, 24(1) J. FIN. INTERMEDIATION 25 (2015).
[34] *See* Donald P. Morgan, Michael R. Strain, and Ihab Seblani, *How Payday Credit Access Affects Overdraft and Other Outcomes*, 44 J. Money, Credit & Banking 519 (2012).
[35] CFPB DATAPOINT: FREQUENT OVERDRAFTERS at 16, Table 2.

monthly deposits ($2,554) than Non-Overdrafters ($2,093) and Infrequent users ($1,726).[36] Despite having higher levels of monthly deposits, however, Very Frequent users had an average end-of-day balance of only $276, compared to $1,585 for Non-overdrafters and $518 for Infrequent users. The CFPB also found little evidence of correlation between neighborhood income and overdraft usage; for example, the average neighborhood income of Infrequent overdrafters ($55,936) was similar to that of Moderately Frequent overdrafters ($54,953) and Very Frequent users ($54,265).[37]

This high level of transaction activity, high level of deposits, and low average end-of-day balance suggests that those who overdraft most frequently do not do so because they are low-income but because they have a comparatively high level of activity occurring in their accounts, perhaps giving rise to recurrent short-term and unpredictable timing asynchronies between debits and credits for which overdraft protection is the best-available option to cover these short-term needs.

Research by Michael Flores confirms the findings of the CFPB's Data Point report.[38] Flores found, contingent on an account having at least one overdraft transaction during the period under investigation, that overdraft usage was highest among those accounts with (1) *higher* levels of monthly deposit amounts but also (2) the *lowest* average monthly balances. For example, households with more than $5000 in monthly deposits had more than 2-1/2 times as many overdrafts per month (1.5 items versus 0.6) than those with $500 or less per month and the average number of items rose linearly with increasing income. Accounts with low average monthly balances, however, had a larger number of overdrafts than those with higher average balances. Flores suggests that

[36] Moderately Frequent users had an average of $2,050 per month in deposits.
[37] CFPB DATAPOINT: FREQUENT OVERDRAFTERS, *supra* note.
[38] *See* Flores, *Assessment of Overdraft Protection*, *supra* note.

this relationship between high monthly deposits, low average monthly balances, and high usage of overdraft protection might reflect rational usage of overdraft protection by middle-income households to deal with budgetary volatility and resulting short-term misalignments of income and expenses from month to month. Like the CFPB, Flores finds no evidence that lower-income households (as proxied by size of average monthly deposits) incur a disproportionate percentage of overdrafts and also finds that lower-income households were more likely to have overdraft fees waived than higher-income households. Finally, Flores found that, on average, lower income accounts are less likely to opt-in to POS and ATM overdraft protection than higher-income accounts and more likely to have more POS and ATM transactions declined paid into overdraft protection than higher-income households, which suggests that banks are not disproportionately approving transactions by lower-income consumers to exploit or "feast" on their lower-income circumstances.

C. Frequent Users of Overdraft Protection Have Limited Alternative Sources of Short-Term Liquidity

As noted, frequent users of overdraft protection have limited access to credit cards and even where they have credit cards, they have less credit available on them. Frequent users of overdraft protection are also less likely to have access to other sources of liquidity, such as linked savings accounts or lines of credit than consumers that do not use overdraft.

For example, according to a consumer survey by the Raddon Financial Group, when bank customers were asked where they would get access to short-term credit if needed, 56% of non-users of overdraft protection said they would simply transfer the money from another account, presumably a savings account. By contrast, only 13% of elevated users of overdraft protection said they would do so, presumably reflecting the fact that they have no other accounts available.[39] Moreover, while in theory bank consumers who are unable to get a credit card could apply for a tied bank line of credit, many elevated users of overdraft protection would be unable to be approved.[40]

D. Summary: Characteristics of Frequent Users of Overdraft Protection

This composite picture of frequent users of overdraft protection suggests that they use the product because they have a high demand for short-term liquidity because of budgetary volatility and a high demand for overdraft protection because of highly-constrained access to alternative sources of short-term liquidity. Indeed, as will be discussed below, if frequent overdrafters were to face reduced access to the product they would likely incur more NSF fees (which could be more expensive in total cost than overdraft protection once late and penalty fees are included) and declined payments or be forced to increase their use of payday loans. By contrast, there is little evidence that overdraft protection is designed to exploit lower-income consumers.

More important, simply reducing access to overdraft protection will not magically alleviate the underlying economic factors that lead consumers to use overdraft protection nor will it magically increase their access to other types of short-term liquidity such as credit cards. This point is especially salient in light of other regulatory and other issues that in recent years have actually resulted in reduced access and higher prices on credit cards for subprime consumers, thereby leading to increased reliance on products such as

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[39] Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5, at 1173 (summarizing findings of Raddon Financial Group survey).
[40] *Id.*

overdraft protection, payday loans, and installment loans from personal finance companies.[41]

IV. Impact of New Restrictions on Overdraft Protection for Small Banks

Available evidence suggests that community banks are much more dependent on the revenues generated by overdraft protection than larger banks. As a result, any initiative that dramatically reduces revenues from overdraft programs, such as strict limits on the number of overdraft transactions per year or price caps on the permissible amounts that can be charged for overdraft protection services, will likely harm smaller banks disproportionately relative to larger banks and force them to seek out new sources of revenue that could erode their already-tenuous competitive position versus larger banks. In turn, by further tilt the competitive playing field against smaller banks consumers will suffer from reduced choice and competition.

Large, diversified consumer mega-banks offer multiple lines of products and services from which they can generate revenues, such as wealth and investment advisors, monthly maintenance fees, and an array of product offerings such as credit cards, car loans, insurance, and mortgages. But offering such a wide array of products and services requires certain scale economies in expertise, regulatory compliance, and other up-front investments in personnel and process. As a result, community banks typically offer a smaller array of products and services and lack the scale and expertise to diversity their revenue streams by easily adding new product lines.[42] As a result, regional and

[41] *See* CFPB TASKFORCE REPORT, *supra* note 4, at Chapter 10.
[42] *See* Justin Ho, *As Big Banks Lower Overdraft Fees, Smaller Banks Mull Their Options*, MARKETPLACE.ORG (Jan. 12, 2022), *available in* https://www.marketplace.org/2022/01/12/big-banks-lower-overdraft-fees-small-banks-mull-their-options/.

community banks are generally more reliant on revenue generated by overdraft fees than large banks.[43] Moreover, in the wake of Dodd-Frank, many smaller banks actually discontinued some revenue-generating product lines, notably mortgages, in response to the elevated regulatory cost, complexity, and potential liability associated with offering those products.[44]

Examining FDIC data in 2013, Michael Flores and I confirmed this conventional understanding, finding that smaller banks were more than twice as dependent on overdraft protection revenues as a share of their net operating income than larger banks.[45] As noted, this seems to still be the case today.[46]

Moreover, even if smaller banks could defray reduced revenues from operating overdraft programs by imposing new fees, such as monthly maintenance fees, they could do so only by putting at risk their competitive position, which rests on continuing to offer free checking. For example, following the enactment of the Durbin Amendment as part of Dodd-Frank, large banks responded by substantially curtailing access to free checking and raising bank fees substantially.[47] Community banks and credit unions below the Durbin Amendment's $10 billion asset threshold, by contrast, have seen some erosion in debit card fee revenue, but much less so than larger banks. As a result, smaller banks have been able to continue offering free checking accounts at a much higher rate than

[43] *See* Max Reyes, *Dimon Took Heat by Regional Banks Rely More on Overdraft*, BLOOMBERG.COM (June 1, 2021), *available in* https://www.bloomberg.com/news/articles/2021-06-01/dimon-took-heat-but-regional-banks-rely-most-on-overdraft-fees; Aaron Klein, *A Few Small Banks Have Become Overdraft Giants*, BROOKINGS (Mar. 1, 2021), *available in* https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants/.
[44] *See* Todd Zywicki, *Dodd-Frank at Five Years: Implications for Consumers and the Economy*, 34(11) BANKING AND FIN. SERVS. POL'Y REPORT 1 (2015).
[45] *See* Flores and Zywicki, *Commentary on CFPB Report*, *supra* note 16.
[46] *See supra* note 43 and accompanying text.
[47] *See* Todd Zywicki, Julian Morris, and Ben Sperry, *Credit Cards and the Reverse Robin-Hood Fallacy: Do Credit Cards Rewards Really Steal from the Poor and Give to the Rich?*, 41(3) BANKING AND FIN. SERVS. POL'Y REPORT 1 (2022).

larger banks.[48] Any erosion to other revenue streams, however, would dramatically increase the pressure on small banks to reduce access to free checking and increase account fees generally, thereby dramatically reducing the value of this competitive advantage. Thus, contrary to conventional wisdom, new restrictions on overdraft protection would likely have a much larger negative impact on smaller financial institutions and their customers than larger ones, which are less reliant on overdraft fee revenues generally and which can turn to a larger source of alternative revenue lines to offset lost overdraft fee income.

V. Reducing Access to Overdraft Protection Would Increase the Cost of Bank Accounts for Many Consumers, Force Many Consumers to Rely on More-Expensive Alternatives, and Reduce Access to Bank Accounts

As noted, reduced access to overdraft protection, such as by fee limits or caps on the number of overdrafts a consumer could use, will impose direct harm on many of those consumers who rely on overdraft protection to cover payments. But available evidence indicates that many other consumers would also be harmed by new restrictions on overdraft protection programs, most notably lower-income consumers and those traditionally excluded from the financial system.

As with any other consumer financial product, payments made through overdraft protection run some risk of subsequent non-payment and eventual chargeoff.[49] Moreover, predicting which consumers will default on their overdraft advances can be very difficult; indeed, many chargeoffs occur from "hit-and-run" consumers who open a new bank

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[48] *Id.*
[49] *See* CFPB DATAPOINT: FREQUENT OVERDRAFTERS, *supra* note.

account (perhaps fraudulently) and max out their overdraft protection limit and then close the account while making no effort to repay the amount advanced.[50] Financial institutions will then be forced to cover those advances through fees generated by other consumers.

As a result, if regulators place price ceilings on the maximum permissible fee that can be assessed for an overdraft advance (such as $10), financial institutions will be likely to respond either by reducing access to overdraft protection services to a more limited subset of consumers (perhaps returning to the era where overdraft protection was largely a privilege of more elite customers) or reducing the allowable amount of the size of the line available to consumers to access through overdraft protection.

Indeed, a recent paper by Dlugosz, Melzer, and Morgan, confirms this prediction.[51] They found that federal preemption of state price ceilings on the size of the permissible fees that could be charged for overdraft protection transactions led to higher average fees on overdraft transactions but also a willingness to cover a larger number of payments (prior to which they were more likely to dishonor payments) and returned check rates fell by 10%, resulting in fewer bounced checks and accompanying NSF and related fees.

But limits on overdraft protection would be likely to have adverse effects not just for those who use overdraft protection but for other consumers as well, including those who never use overdraft protection.[52] This is for several reasons. First, as noted above, fees generated by overdraft protection programs provides a revenue line for financial institutions, especially smaller ones. Eliminating or substantially reducing revenues from

[50] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5.
[51] Jennifer L. Dlugosz, Brian T. Melzer, and Donald P. Morgan, *Who Pays the Price? Overdraft Fee Ceilings and the Unbanked*, working paper (Apr. 15, 2021).
[52] *See* Zywicki, *Economics and Regulation of Bank Overdraft Protection*, *supra* note 5, at 1179.

overdraft protection will require those institutions to look elsewhere for operating revenue, such as by charging higher monthly maintenance fees or fees for other services, which will be expected to harm lower-income households more than higher-income households. Second, overdraft protection serves a type of insurance that consumer payments will clear, rather than resulting in bounced checks or other dishonored payments. Thus, absent access to overdraft protection, consumers will need to maintain larger precautionary balances to ensure that payments do not bounce. This too will be likely to negatively impact lower-income consumers as well. Empirical evidence tends to confirm both of these concerns.

For example, consider the market response to Fed's rulemaking in 2009 to require consumers to opt in to overdraft protection for ATM and POS debit card transactions. According to one economic analysis, "within days" of the Fed's announcement of the new rule, banks started scaling back access to free checking, imposing new fees and eliminating services for consumers.[53] The percentage of consumer accounts eligible for free checking fell eleven percentage points—from 76% in 2009 to 65% in 2010—which amounts to approximately twenty million accounts.

Dlugosz, Melzer, and Morgan found that when price controls on overdraft fees for national banks were relaxed following preemption, checking account ownership by low-income households (defined as the bottom quintile of households) rose by 4 percentage points in affected states relative to others, which they note corresponds to a 10% increase

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[53] *See* David S. Evans, Robert E. Litan, & Richard Schmalensee, *Economic Analysis of the Effects of the Federal Reserve Board's Proposed Debit Card Interchange Fee Regulations on Consumers and Small Businesses*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE (Feb. 22, 2011), *available in* https://www.federalreserve.gov/SECRS/2011/March/20110308/R-1404/R-1404_030811_69120_621655419027_1.pdf.

in the probability that a low-income household would have a bank account.[54] They further note, "By contrast, bank account ownership by higher income households does not change after preemption, implying the rationing of overdraft credit under fee caps affects only low-income households." Moreover, not only are low-income households more likely to obtain accounts, they are more likely to persist in account ownership and less likely to lose accounts following preemption.[55] Moreover, they when price controls on overdraft fees were preempted, national banks lowered the minimum balance necessary for eligibility for interest checking by 28%-40%, or approximately $3760$538 less that customers need to keep in interest bearing accounts in order to avoid a monthly fee.

This suggests that new limits on overdraft protection programs would be likely to reduce access to the service for those consumers who current rely on it, resulting in a larger number of dishonored payments and bounced checks and potentially greater reliance on alternative products such as payday loans. Moreover, these offsetting effects would also be likely to adversely impact even those consumers who never or rarely use overdraft protection as banks would be likely to respond by reducing access to free checking, raising mandatory minimum balances to be eligible for free accounts, and reduction of access to bank accounts generally, especially among lower income households.

Thank you for your time and the opportunity to appear before you today and I am happy to take any questions you may have.

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[54] *See* Dlugosz, Melzer, and Morgan, *supra* note 51.

[55] One possible reason for this finding might be that greater access to overdraft protection might result in fewer bounced checks and dishonored payments, which are a leading cause of bank account closures.

Statement for the Record

On Behalf of the

American Bankers Association

Before the

Subcommittee on Consumer Protection and Financial Institutions

of the

House Financial Services Committee

March 31, 2022

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Chairman Perlmutter, Ranking Member Luetkemeyer, and distinguished Members of the Subcommittee, the American Bankers Association[1] (ABA) appreciates the opportunity to submit a statement for the record for today's hearing examining overdraft protection services.

ABA has long advocated for regulatory policies that ensure consumers have a wide range of options within the regulated banking industry to meet emergency expenses and to help customers address misalignments in deposits and payments. Consumers should be able to choose from revolving credit, installment loans, single payment loans, and overdraft protection services.

Overdraft protection services are an important source of liquidity for many Americans. With access to overdraft protection, bank customers can have confidence that they can pay their rent or utility bill, thereby avoiding late fees, a utility shut-off, or even eviction. For customers living paycheck to paycheck, access to overdraft provides significant value. The average transaction amount paid into overdraft was $198 in 2019, according to the research firm Curinos.[2] Unsurprisingly, 9 in 10 consumers (89%) find their bank's overdraft protection valuable, according to a February 2022 national survey by Morning Consult.[3]

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[1] The American Bankers Association is the voice of the nation's $23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $19.7 trillion in deposits and extend nearly $11.2 trillion in loans.

[2] Curinos, *Competition Drives Overdraft Disruption* 8 (2021), https://curinos.com/insights/competition-drives-overdraft-disruption/.

[3] Press Release, Am. Bankers Ass'n, *ABA Unveils New Consumer Polling Data on Major Bank Policy Issues at 2022 Washington Summit* (Mar. 8, 2022), https://www.aba.com/about-us/press-room/press-releases/aba-unveils-new-consumer-polling-data-on-major-bank-policy-issues-at-2022-washington-summit [hereinafter, 2022 Morning Consult Survey Data]. Morning Consult surveyed 2,210 consumers nationwide between February 18-19, 2022 about their preferences regarding overdraft. *Id.*

As Congress examines overdraft protection services, we urge it to take three steps:

1. **Congress should respect and protect consumer choice.** Consumers who do not seek access to overdraft services can open an overdraft-free account, which is widely available at banks across the nation; these include increasingly popular Bank On-certified accounts, which are now available at institutions making up 56% of the U.S. deposit market. However, for those consumers who value access to overdraft protection, Congress should not presume to know what is best for consumers and deprive them of their choice by imposing additional restrictions that would reduce availability of these important services. These restrictions would prevent important payments from being paid, deny customers access to liquidity, and cause customers to incur additional fees and inconveniences. Rather than protecting consumers who choose to access overdraft services, these proposals may drive customers from the banking system and to payday and title lenders, pawn shops, and other nonbank financial service providers.

2. **Congress should direct the Consumer Financial Protection Bureau (CFPB) to study why consumers use and value access to overdraft protection.** Congress' inquiry into overdraft services should not be based on selective anecdotes, unsupported assumptions about consumer behavior, or Congress substituting its own view of what is "best" for consumers, but rather on an evidence-based understanding of regular users of overdraft protection—why they use the product, what they understand about their ability to opt in and out, and what their preferences are relative to available alternatives. Congress also should direct the CFPB to study the monetary value provided to consumers by overdraft—i.e., the amount of the charge that caused each overdraft and the amount of late and other penalty fees avoided by the institution's honoring the charge. Absent compelling evidence of knowledge gaps or that consumers are using the product irrationally—i.e., evidence that regular users of overdraft protection do not understand the product and its costs relative to available alternatives—individuals should be assumed to be the best judge of what is in their best interest and should remain free to choose to use overdraft.

3. **Congress should encourage regulators to reduce barriers that discourage banks from offering affordable small-dollar credit.** We share Congress' interest in promoting consumer access to safe and affordable small-dollar credit. Congress should encourage regulators to reduce barriers that discourage banks from offering affordable small-dollar credit, such as by directing the CFPB not to initiate new rulemaking to impose prescriptive underwriting or other requirements on small-dollar loans. We should be expanding responsible consumer options in this area, not limiting them.

Banks are Evaluating their Overdraft Protection Programs to Respond to Consumer Preferences and Competition

The regulatory framework governing overdraft provides an effective, pro-consumer baseline. In 2009, the Federal Reserve amended Regulation E to require that a consumer affirmatively consent – or "opt in" – to overdraft services before a bank or credit union may impose a fee for an overdraft resulting from a debit card point-of-sale or automated teller machine (ATM) transaction.[4] In the years since implementation of the 2009 rule, depository institutions have evaluated their obligations and the markets they serve, listened to consumer preferences, and responded to the market by innovating how they provide overdraft services.[5] The process has yielded a variety of overdraft protection programs that fairly and transparently respond to consumer needs, promote free choice, and encourage competition.

For example, some institutions give customers at least 24 hours to bring a negative balance to a positive position before charging an overdraft fee or allow customers early access to direct-deposited funds. Many institutions do not charge an overdraft fee if the customer overdraws their account by a *de minimis* amount or charge no more than one overdraft fee per day. Other institutions may not charge a transfer fee when money is transferred from the customer's linked account to cover an insufficient funds transaction in the customer's primary account. Finally, some banks and credit unions have announced they will no longer charge overdraft fees or have eliminated the institution's returned item fee. The variety of options demonstrates a competitive marketplace that is responding to consumer preferences and competitive forces.

In addition, today's banks empower customers with real-time information they need to avoid overdrawing their account. Customers can elect to receive low balance alerts by text or email, and they can check balances through mobile and online banking, voice or automated phone service, or ATM inquiries. As referenced above, customers may have the option to link a transaction account to a savings or money market account, personal line of credit, or credit card in order to automatically transfer money into the transaction account if it becomes overdrawn. Furthermore, insured depository institutions nationwide provide overdraft-free account options, including Bank On-certified accounts, at branches and through online and mobile access. In presuming to understand what is best for individual Americans, Congress proposes to substitute its own judgment for that of individual Americans, who have a range of choices not just of where they bank but which account works best for them. Evidence abounds that this approach does not respect the clear message from consumers themselves. Surveys indicate that consumers appreciate these overdraft marketplace changes and are satisfied with the services provided by their bank. The 2022 Morning Consult survey found that 89% of consumers are "very satisfied" or "satisfied" with their primary bank, and 88% agree they have multiple options when selecting

[4] 12 C.F.R. § 1005 *et seq.* (2022).
[5] *See* Am. Bankers Ass'n, *A New Framework for Overdraft Program Compliance* 2-3 (2010), https://www.aba.com/news-research/research-analysis/a-new-framework-overdraft-program-compliance.

products and services such as bank accounts, loans, and credit cards.[6] As financial institutions compete for customers, we can expect to see further innovations in the overdraft options banks make available to consumers.

Policymakers Should Not Impose Additional Restrictions on a Product that Consumers Value

Banks' innovations to their overdraft programs reflect the fact that the United States has the largest, most diverse, and most competitive financial services marketplace in the world. Our nation is home to nearly 10,000 banks and credit unions, and an ever-expanding array of fintech providers. Consumers enjoy a wide range of choices when it comes to financial products and services, including overdraft protection.

Unsurprisingly, surveys consistently demonstrate that consumers overwhelmingly value overdraft services. The 2022 Morning Consult survey found that:

- 9 in 10 consumers (89%) find their bank's overdraft protection valuable;
- 3 in 4 consumers (74%) who have paid an overdraft fee in the past year were glad their bank covered their overdraft payment, rather than returning or declining the payment;
- 61% of consumers think it is reasonable for banks to charge a fee for an overdraft; and
- Three-quarters of consumers (74%) view overdraft fees as reasonable when large payments like mortgages or rent payments are covered and paid on time.[7]

These findings are consistent with prior surveys. For example, a 2021 Morning Consult survey found that 90% of consumers find their bank's overdraft protection valuable, and 72% were happy the overdraft payment was covered by the bank, rather than returned or declined.[8] Similarly, a 2020 Morning Consult survey found that 89% of consumers find their bank's overdraft protection valuable, and 73% were glad the overdraft payment was covered by the bank, rather than returned or declined. Together, these survey data demonstrate the enduring reality that consumers value the peace of mind offered by overdraft protection and do not want their access to this service limited.

Restrictions on overdraft may lead financial institutions to stop offering these services, which would result in significantly more returned checks and declined transactions. This, in turn, will mean that consumers will pay returned item fees charged by the payee or merchant and late fees, have lower credit ratings, or be required to pay using cash, a cashier's check, or a money order. It should be no surprise that, in the most recent Morning Consult survey, significantly more consumers indicated they would oppose (54%) rather than support (26%) a government proposal

[6] 2022 Morning Consult Survey Data, *supra* note 3, at 1.
[7] *Id.*
[8] Press Statement, Rob Nichols, Am. Bankers Ass'n, *ABA Statement on CFPB Overdraft Research* (Dec. 1, 2021), https://www.aba.com/about-us/press-room/press-releases/aba-statement-on-cfpb-overdraft-research.

to prevent banks from offering overdraft protection.[9] Similarly, in its survey of consumers, Curinos found that 62% of consumers would reconsider their support for new regulation of overdraft if it limited access to the service.[10]

Moreover, statutory and regulatory restrictions can quickly become obsolete as consumer needs and demands, technology, and markets change. And in fact, prescriptive, time-bound statutes and regulations are likely to chill and artificially constrain an otherwise dynamic and competitive marketplace for cheaper, more convenient, and flexible alternatives to cover bank account shortfalls.

Congress Should Reject Legislation that Would Restrict Overdraft

Legislation introduced in the House of Representatives, the *Overdraft Protection Act of 2021*, would prohibit banks and other financial institutions from charging consumers more than one overdraft fee in a month and more than six overdraft fees in a year, among other provisions.[11] If enacted, the bill would harm consumers by upending the existing regulatory framework governing overdraft. Congress should reject this legislation.

The bill is overly broad and will prevent important payments from being honored. The bill's limit of one overdraft fee per month and six overdraft fees per year applies to *all* overdrafts regardless of form of payment — i.e., all check, ACH, bill-pay, debit card (point-of-sale and recurring) transactions. The Federal Reserve's 2009 amendments to Regulation E intentionally require a consumer's opt-in only for debit card (in-store purchase) and ATM transactions. This ensures that important checks and ACH, bill-pay, and recurring debit card payments may be paid—payments for rent, utilities, automobile, mortgage, and other loans, and necessities. When these payments are declined, it may set off a cascade of significant adverse consequences for the consumer, as noted above.

By restricting the number of overdraft fees a customer may incur, the legislation suggests that Congress knows better than an individual what is best for him or her, substituting a government limitation for consumer choice. The Federal Reserve limited its opt-in requirement to debit card and ATM transactions because the agency determined, after extensive consumer testing, that consumers do not want to have to opt in to overdraft protection for check, ACH, and recurring debit card transactions.[12] They want these transactions paid. Indeed, the 2022 Morning Consult

[9] 2022 Morning Consult Survey Data, *supra* note 3, at 1.
[10] Curinos, *supra* note 2, at 12 & fig. 2.7.
[11] H.R. 4277, Overdraft Protection Act of 2021, 117th Cong. (2021).
[12] In 2008, the Federal Reserve conducted intensive consumer testing of the overdraft opt-in form. Among other conclusions, the Federal Reserve found that consumers understood how overdraft coverage works—"that is, they understood what would happen if they overdrew their account through an ATM, debit card, recurring debit, or check transaction"—and understood that they "had the right to opt out of overdraft coverage." Bd. of Govs. of the Fed. Reserve Sys., Review and Testing of Overdraft Notices iii & iv (2008).

survey found that 74% of consumer customers are happy that their depository institution covered an expense when their account was overdrawn.[13] The legislation's limits on overdraft usage overrides this clear consumer preference.

The legislation also is unnecessary because consumers who do not want to have access to overdraft can open an account that does not provide this service. As stated above, consumers already have broad, nationwide access to affordable, overdraft-free transaction accounts (often structured as checkless checking or reloadable prepaid cards), including Bank On-certified accounts, the availability of which are exploding: available accounts have nearly quintupled in the last 18 months alone among banks of all sizes and are reaching low- and moderate-income communities. Congress should not limit the choice of consumers who wish to have overdraft services when overdraft-free accounts are so widely available.

In addition to the limits on the number of overdraft fees that may be incurred, the legislation requires that the amount of any overdraft fee be "reasonable and proportional" to the amount of the overdraft and the cost to the depository institution in providing the overdraft coverage for the transaction. This requirement does not account for the costs to the institution to collect a negative balance or losses to the institution. If overdraft fees cannot reflect the full cost of providing the service, banks may return more items presented against insufficient funds, instead of paying those items into overdraft, especially for those customers who rely most on the service. As noted above, returning important payments results in considerable cost, embarrassment, and inconvenience for consumers. Banks also may limit the availability of fee-free accounts if overdraft fees are restricted.

<u>Congress Should Direct the CFPB to Study Why Consumers Use and Value Overdraft</u>

Instead of limiting consumers' usage of overdraft, Congress and other policymakers should seek to understand consumers' preferences regarding the product. Specifically, any policy action that may impair access to overdraft services should be based on an understanding of why many consumers choose to use the product. Congress should direct the CFPB to investigate:

- The features that consumers seek when they open a deposit account;
- What occasions or needs typically prompt overdraft use;
- Whether overdraft protection has helped the consumer avoid a late or other penalty fee, meet another emergency need (such as avoiding a utility shut-off or eviction or responding to a medical emergency), or avoid the embarrassment, inconvenience, or other negative consequence caused by a declined transaction;
- Whether consumers who use overdraft protection are aware of, and qualify for, available alternatives for covering overdraft transactions;

[13] 2022 Morning Consult Survey Data, *supra* note 3, at 1.

- Whether the consumer has prior experience using available alternatives for covering short-term liquidity needs;
- Why many consumers elect to opt-in to debit card overdraft protection instead of using available alternatives for short-term liquidity;
- Whether the consumer has access to modern tools warning them of a potential overdraft, and yet choose to proceed with the transaction;
- What consumers understand about their ability to opt-out and whether they have ever exercised that right; and
- Consumers' options for meeting short-term liquidity needs if access to overdraft protection is restricted or cut off entirely.

The CFPB also should study the amount of the charge that caused each overdraft and the amount of late and other penalty fees avoided by the institution's honoring the charges. These data will help determine the value to consumers of overdrafts. As stated earlier, the Curinos report found that the average transaction amount paid into overdraft was $198 in 2019.[14] This indicates that overdraft provides significant value to consumers.[15]

Policymakers Should Reduce Barriers that Discourage Banks from Offering Affordable Short-term Credit

We share Congress' interest in promoting consumer access to safe and affordable small-dollar credit. Consumers often need this credit to meet emergency expenses, disruptions in pay, and misalignments in the timing of their deposits and expenses. Because borrowers' needs are diverse, policymakers should eliminate barriers to a vibrant market with many choices for small dollar credit, including credit cards, installment loans, single payment loans, and overdraft protection services. Unfortunately, actions by Congress and regulators have stifled the market for this credit. At the same time, Congress has driven up consumers' costs to hold a checking account by limiting debit card interchange fees through the Durbin Amendment and Regulation II.[16] Policymakers should focus their efforts on reducing barriers that discourage banks and other depository institutions from providing short-term credit.

Bank-provided small dollar loans are an important part of the solution to consumers' credit needs. Not only do small dollar loans help consumers navigate liquidity shortfalls, they provide a pathway for consumers to access other bank products. When loans are repaid as agreed,

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[14] Curinos, *supra* note 2, at 8.
[15] ABA and other trade associations representing banks and credit unions have urged the Bureau to conduct a consumer survey or focus groups to understand consumers' preferences regarding overdraft and the monetary value provided by overdraft. *See* Letter from Am. Bankers Ass'n *et al.*, to Rohit Chopra, Dir., Consumer Fin. Prot. Bureau (Jan. 13, 2022), https://www.aba.com/advocacy/policy-analysis/joint-trades-letter-to-cfpb-re-overdraft.
[16] *See* Vladimir Mukharlyamov and Natasha Sarin, *The Impact of the Durbin Amendment on Banks, Merchants, and Consumers*, Faculty Scholarship at Penn Law 4 & 5 (2019).

consumers can build or improve their credit scores and graduate to other credit products. Expanding access to small dollar credit also supports economic activity in the communities where these borrowers live.

However, the uncertainty over the CFPB's 2017 payday lending rule has discouraged banks from offering short-term credit at the scale needed to meet consumers' needs.[17] As initially finalized, that rule would have imposed prescriptive underwriting requirements on small dollar loans that are inconsistent with efficient underwriting approaches. Today, regulated depository institutions are able to use easily accessible information, such as the consumer's credit score and debt-to-income ratio, to determine whether the consumer can repay the loan. Using data points that banks can obtain quickly, small dollar loans can be made in a matter of minutes from the convenience of the consumer's computer or smart phone. This underwriting approach also drives down the cost of these loans, enabling affordable pricing with several months to repay the loan.

The federal banking agencies have endorsed the use of dynamic underwriting approaches to originate small dollar loans, stating that "responsible" small dollar loans may rely on deposit account activity and other external data sources to underwrite the loan.[18] However, there is continued uncertainty over whether the CFPB may seek to reinstate prescriptive underwriting requirements on these loans. Congress should direct the CFPB not to take this action. A clear signal from the CFPB that the agency does not seek to impose additional requirements on these loans would remove regulatory uncertainty and encourage banks to establish or expand small dollar loan programs that are scaled to meet consumers' needs.

Conclusion

We share Congress' interest in making sure consumers have a range of reliable choices when it comes to financial products and services. ABA looks forward to continued dialogue about how banks can provide consumers with diverse options for meeting liquidity shortfalls, including through use of overdraft. Together, we can ensure that consumers continue to have choices about whether their payments are honored when they are short of funds and avoid the negative consequences of returned payments.

[17] *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472 (Nov. 17, 2017).
[18] Bd. of Govs. of the Fed. Reserve Sys. *et al.*, Interagency Lending Principles for Offering Responsible Small-Dollar Loans 1 (2020).

chime

Statement for the Record

Submitted to the

Subcommittee on Consumer Protection and Financial Institutions

House Committee on Financial Services

March 31, 2022

On Behalf of

Chris Britt
CEO
Chime

Chime Financial, Inc. (“Chime”) is pleased to submit this statement for the record on the Subcommittee on Consumer Protection and Financial Institution’s hearing on, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions." Chime thanks Chairman Perlmutter and Ranking Member Luetkemeyer for holding this important hearing and offers our strong support for the Subcommittee's goal of ensuring that consumers have access to high quality and transparent financial products. Chime has always believed eliminating overdraft fees is the right thing to do, which is why Chime has led on fee-free overdraft since 2018.

Chime is a member-obsessed financial technology company that was founded in 2012 on the premise that basic banking services should be helpful, easy and affordable. Our mission is to help our members - everyday people - achieve financial peace of mind. Chime’s business model doesn’t rely on overdraft fees, monthly service fees, minimum balance requirements and other features that penalize the millions of consumers who spend down their accounts each month.

The current consumer banking market does not work well for millions of Americans, with huge unmet needs across all areas of their financial lives. Innovation on overdraft from companies like Chime as well as pressure from Congress and financial regulators – particularly the CFPB – has driven some positive changes to overdraft policies, leading to better outcomes for consumers. Since 2018, Chime has offered fee-free overdrafts through its “SpotMe" program, allowing members to overdraft on ATM withdrawals and debit card purchases up to $200 with no fees. Over the past 12 months, Chime has spotted members 1 million times per day, avoiding billions in overdraft fees on daily essentials like gas and groceries. SpotMe is one of Chime's most popular offerings, with approximately 56% of Chime's active members enrolled. As a result of leadership by Chime and others on overdraft, we are pleased that we are now witnessing a "race to the top" in this space.

We are proud that our business model allows us to align with our customers' interests and we've been able to bring other products to market that were unavailable to many consumers just a few years ago. This includes: free access to paychecks up to two-days early, accounts with no monthly fees or account minimums, and a deposit- and interest- free secured credit card that helps members safely build credit and doesn't require a credit check to access. As a result of this consumer-first model, millions of people access banking services through Chime. In fact, Chime is one of the most highly recommended financial services providers in the United States[1] among both traditional banks and fintechs - and we are enormously proud of the trust that our members place in us and their willingness to recommend us to their family and friends.

Chime is not a bank; instead Chime partners with two community banks to meet the growing consumer demand for faster, lower-cost choices in financial services. Our bank partner model allows us to offer products at scale that are fully regulated and safe for consumers, including member deposit accounts which are held at our FDIC-insured partner banks. Our products are developed in compliance with all applicable banking laws and regulations, and we are overseen by our bank partners as well as their federal banking regulators.[2] By leveraging Chime's platform investments and leadership in technology-driven financial innovations, Chime's partners are able to better compete by expanding their customer base. Our proven partner bank model has had a positive impact on our members and has helped to create a more competitive and fair financial services industry.

Chime strives to be a resource to help our members manage their finances, avoid unnecessary fees and create a solid financial foundation. Our product offerings will continue to grow with our members: approximately 77% of active members consider Chime to be their primary financial account; and nearly 60% of Chime members are 35 or younger. Moving forward, Chime will continue to create consumer-aligned products that authentically help our members achieve financial peace of mind and, we hope, will help set an example for the financial services industry.

We thank the Subcommittee for holding this important hearing and for its leadership on the critical issues discussed today.

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[1] Chime received the highest 2021 Net Promoter Score among competitors in the industry according to Qualtrics®.

[2] Chime's partner banks are regulated and supervised by state and federal banking agencies. Chime is subject to its partner banks' third party risk management programs, which are supervised by state and federal banking agencies. Chime is also subject to Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC) regulations. At the state level, Chime is regulated by agencies focused on consumer protection and financial services.

STATEMENT FOR THE RECORD OF COLOR OF CHANGE

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

THE END OF OVERDRAFT FEES? EXAMINING THE MOVEMENT TO ELIMINATE THE FEES COSTING CONSUMERS BILLIONS

MARCH 31, 2022

Dear Chairman Waters and Members of the Subcommittee on Consumer Protection and Financial Institutions:

Color Of Change appreciates the opportunity to provide this statement for the record on ending overdraft fees. Color Of Change (COC) is the nation's largest online racial justice organization in the United States. We motivate our members—and hopefully their friends and families—to believe in a better world and to join campaigns for systemic change across many key domains of Black community life in service of dignity, equity, opportunity and justice. We operate from the belief that a better world requires a healthy and just economic system that responds to the essential needs of our communities and allows for us to fully flourish.

Banks' overdraft practices cause devastating, lasting harm to the customers whose financial health banks should be supporting. Just 9 percent of account holders pay 84 percent of the billions shelled out annually in overdraft fees; these consumers tend to carry low balances—averaging less than $350—and have relatively low monthly deposits. According to a report by the Center for Responsible Lending (CRL), for one group of hard-hit consumers, the median overdraft fee was $37, nearly $1,300 annually. That's one-third of an income at the federal poverty level. Those who have fallen victim to overdraft fees contend with not only precarity but anxiety and even depression. While the financial impact of such fees has been measured, the emotional and mental toll has not.

Overdraft fees disproportionately affect Black households. Research from the *National Survey on Credit Card Debt of Low- and Middle-Income Households* found that Black families face profound challenges to their financial security. Under difficult economic conditions, many rely on lines of credit to make ends meet or to invest in their futures. Any resulting late or overdraft fees risk overburdening an already vulnerable population. Furthermore, any reporting to credit bureaus of increasing balances and late fees poses a challenge to economic security beyond the persistent coronavirus crisis.

Banks collected more than $11.68 billion in 2019 through abusive overdraft practices that drain consumers' checking accounts.[1] Nearly 45 percent of these recorded fees came from Black consumers.[2] In the midst of a global pandemic and unprecedented economic turmoil, as they yielded unprecedented profits, COC demanded that banks eliminate this punitive practice and prioritize the needs of Black consumers. Banks enforce overdraft policies not because overdraft fees are essential to operating budgets, but because they are an easy way for their already-wealthy CEOs to make millions of dollars off of the people who can least afford them.

Institutions like Bank of America, Capital One, Wells Fargo, and JPMorgan Chase made statements to condemn racial injustice and advance racial equity. Goldman Sachs, for instance, pledged $10 million as part of the Goldman Sachs Fund for Racial Equity. Yet Goldman Sachs and other financial institutions do not account for the cascading effects of the 2008 financial crisis, which cost Black and underserved families trillions of dollars in generational wealth.[3] Adding further insult to injury is the practice of overdrafting accounts due to insufficient or delayed funds.

It must not be lost that many financial institutions also played a role in enslaving millions of Black people and people of African descent. Given the denial of true restitution for Black people—for slavery and sins committed since—full elimination of overdraft and other punitive fees is an ideal place to start—at least in shielding from further harm, particularly in the context of a pandemic. Banks' cycles of harm inflict economic insecurity and ultimately decimate wealth and communities' ability to generate a sound financial well-being. No other industry has played a bigger or more enduring role in Black oppression, exploitation, and exclusion. The disparity in banking practices has led to an ever-widening racial wealth gap—one that cripples the stability of Black communities for generations.

On behalf of our members, we urge this Committee to take the bold step of ensuring that the financial services industry holds to the pledges of safeguarding Black communities and communities of color. We insist on the erosion of discriminatory and predatory banking practices, such as overdraft and other punitive fees, that harm Black communities.

* * *

Thank you for the opportunity to express COC's views on this matter.

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1 "New Overdraft Report Urges Congress, Regulators, Banks to Halt Burdensome Bank Fees That Threaten Economic Recovery," *Center for Responsible Lending*, June 2020 https://act.colorofchange.org/go/338198?t=27&ak_proof=1&akid=52975%2E8382913%2EWdjlIl.

2 "The FinHealth Spend Report 2021: What Financially Coping and Vulnerable Americans Pay for Everyday Financial Services," *Financial Health Network*, June 11, 2021 https://act.colorofchange.org/go/338198?t=17&ak_proof=1&akid=52975%2E8382913%2EWdjlIl.

3 "Goldman Sachs Failed 10 Years Ago Today," Better Markets, updated September 20, 2018, accessed June 25, 2021, https://bettermarkets.com/newsroom/goldman-sachs-failed-10-years-ago-today.

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March 31, 2022

The Honorable Ed Perlmutter
Chairman,
Subcommittee on Consumer Protection
and Financial Markets
Committee on Financial Services
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer
Ranking Member,
Subcommittee on Consumer Protection
and Financial Markets
Committee on Financial Services
Washington, D.C. 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

The Consumer Bankers Association (CBA) submits this letter for the record for the hearing entitled ***"The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions***." Overdraft is a safe and affordable form of immediate short-term liquidity used by millions of consumers to ensure they can continue to purchase necessary goods and services. As policymakers' review the overdraft market, it is essential that a better understanding of consumer demand for the product, its use as a form of emergency liquidity and the evolution of the overdraft product by financial institutions is warranted before making any changes that could have unintentional consequences on low to moderate-income Americans. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

Banks work diligently to provide access to highly regulated, financial products to U.S. consumers. As such, CBA supports strong consumer protections for all financial services and products. We believe consumers should receive transparent information to make informed decisions about the financial services and products they choose to use.

Regulatory Acknowledgement

In December 2021, Acting Comptroller of the Currency Michael Hsu recognized overdraft services as one of the last viable sources of short-term liquidity for many U.S. consumers. In his remarks, Acting Comptroller Hsu commented on the state of the overdraft market in the United States, highlighting the important need to provide safe and affordable short-term liquidity options for consumers within the well-regulated, well-supervised banking system.[1] Amidst a renewed focus from policymakers on examining overdraft practices, Hsu's observations and recommendations illustrated how competition can empower and promote financial health for American families.

Recognizing the OCC's intent to protect financially vulnerable Americans, Hsu commented while some banks have eliminated overdraft from their financial suite, widespread adoption of this practice may yield unintended consequences:

> *"While this prevents harm, it can also limit financial capacity. For those living paycheck to paycheck, the flexibility offered by low- to no-cost overdrafts can empower them to pay their bills on time, avoid high-cost alternatives, and improve their credit profile. […] Limiting overdrafts may limit the financial capacity for those who need it most."*

Over the past five years, the overdraft market has rapidly evolved, with a significant number of large banks unveiling consumer-friendly products. While commending recent efforts from banks including PNC and Capital One, Hsu also commented on the impact competition is having on the broader market:

> *"Several banks decided, on their own, to reform their overdraft programs to make them more pro-consumer.[…] A race to the top for the most pro-consumer overdraft program could help make it less expensive to be poor and demonstrate to consumers that the banking system has their backs."*

Acting Comptroller Hsu remains correct in his remarks about the import benefit the overdraft product provides to consumers. CBA encourages other policymakers to undertake a comprehensive review of the overdraft market before promulgating changes that may have adverse effects for consumers.

Consumer Demand Leads to Change

Well informed and technically savvy consumers drove recent changes to overdraft. The popularity of the product is clear, but banks proactively listened to their customers feedback which drove innovation and lead to the updating of polices to increase affordability and access for to those who use overdraft to help meet their short-term liquidity demands.

Recent research by Curinos, a global data intelligence firm, has found that consumers make highly informed choices about when to use overdraft services. These decisions are based on real-time access to account information, clear disclosures and personal experience. Policymakers should keep in mind the existing regulatory framework for overdraft services

[1] Acting Comptroller Michael J. Hsu Remarks before the Consumer Federation of America's 34th Annual Financial Services Conference (December 8, 2021) - "Reforming Overdraft Programs to Empower and Promote Financial Health"- https://occ.treas.gov/news-issuances/speeches/2021/pub-speech-2021-129.pdf.

clearly acknowledges the role of informed individual choice and responsibility and is a voluntary action that is "opt-in." Since the 2010 amendment to Regulation E (Reg E), significant changes were added to the law pertaining to overdraft services to increase transparency and improve disclosures.

Over the past decade, a growing number of Americans leading banks have unveiled new innovations designed to avoid overdraft fees or have an overdraft product with features selected by the consumer *(Appendix A)*. Banks have proactively implemented new overdraft polices that benefited consumers use of the product that include: the elimination of overdraft fees, the elimination of account transfer fees to coverage overages, de minimums exceptions to cover small overages (avoiding an overpriced cup of coffee), grace periods for customers to make accounts whole before overdraft fees are ever assessed, access to small dollar loans (discussed more fully below), the elimination of extend overdraft fees, the elimination of returned items fees, and more. We believe these changes, in conjunction with clear disclosures, will add continued benefit to consumers that rely on overdraft services to cover short-term gaps in finances by continuing to provide a viable service that will come at minimal or no cost.

In many cases, these changes have also been accompanied by the introduction of affordable small loans, serving as an additional emergency safety net for the nearly 60% of Americans who are unable to cover an unexpected $400 bill with savings alone. Without access to a viable – bank offered short-term liquidity product – consumers will be left with little recourse but to use less-supervised, less-regulated, non-depository institutions to meet their needs—an undesirable position to place vulnerable consumers.

Curinos Data – Consumers Understand Benefit & Value Overdraft

In December of 2021, Curinos released its 'Competition Drives Overdraft Disruption' study *(Appendix B)*, which found the changes to bank overdraft programs is being driven more by competition than regulation.[2] Furthermore, the study shows the market rewards organizations that overhaul their existing overdraft programs or develop alternative products and institutions that are slow to act are losing customers to more aggressive competitors. As a result, financial institutions will continue to innovate and provide more low-cost liquidity options, with or without regulatory changes.

Backed by Curinos' proprietary research, the report methodology encompasses both consumers on the demand side and financial institutions on the supply side. On the demand side, Curinos leveraged an annual online consumer research study on checking account purchase behavior of approximately 12,000 respondents, and a targeted online consumer research study on overdraft behaviors. On the supply side, Curinos utilized a review of

[2] The study was initiated at the request of the CBA to fill a research gap in better understanding consumer sentiment, and CBA provided funding for the market research survey. Curinos independently designed, analyzed and documented the research results.

disclosures and offers from 38 financial institution websites, matching a 2015 Pew Study where possible, along with an anonymized survey of behavioral data from 14 financial institutions with $2 billion to $50 billion in total assets, representing $637 billion of total U.S. consumer deposits. Findings indicate consumer demand and intense competition within financial services are driving recent changes in overdraft policies and programs. Specifically, the study found:

- ***Consumers understand overdraft***: Consumers, especially overdraft users, continue to demonstrate a deep understanding of overdraft and available alternatives. More than 60% of overdrafts come from consumers who intend to use the service. More than 80% of overdraft transactions come from consumers who opted into debit card overdraft programs with the clear intention of using it to cover their payments. And two-thirds of consumers indicate that they will incur the cost to ensure no reduction in their access to service.
- ***Fewer people use overdraft***: The percentage of regular overdraft users (those with 10 or more transactions annually) fell by 40% to 4.9% of the population between 2010 and 2020.
- ***Consumers use overdraft for purchases of increased size***: Bank-led initiatives aimed to help consumers avoid an unintended fee have dramatically reduced the number of small purchases tied to overdraft. Since 2008, as a result of banks' innovations, overdraft fees, per U.S. adult, have declined by 77%, with, the average size of purchases triggering overdraft fees quadrupling from $50 to almost $200.
- ***Consumers want more short-term liquidity choices:*** Consumers seek convenient and relevant alternatives to overdraft. The emergence of alternatives in the market is driving consideration of new checking purchases.
- ***Overdraft fee revenue is down significantly***: U.S. overdraft revenue fell approximately 57% from $40 billion in 2008 to $17 billion in 2019.
- ***Challengers that adopt consumer-friendly policies, win market share***: New entrants, including fintechs and challenger banks, have created solutions to better manage or reduce the cost of overdraft. These entities have experienced a 40% increase in account acquisition since 2017. Financial institutions that haven't adopted overdraft innovation have experienced a nearly 30% reduction in consumer acquisition.

These finding underscore the fact that, outside of overdraft, few options remain for consumers to meet their liquidity needs within the well-regulated, well-supervised banking system. CBA has long warned, and bank regulators agree, that further restricting access to short-term liquidity options, such as overdraft services, would drive many families to predatory payday lenders and other expensive venues. Accordingly, we urge policymakers to focus on the consumer need, a complete market analysis, including the many changes already in place, and take into consideration all of the facts as they consider future action. It is our commitment to provide every consumer access to highly-regulated financial products and services.

Small-Dollar – An Essential Solution to Emergency Liquidity Deficits

Our recovering economy has left many consumers with less cushion for emergencies and reduced credit options, making access to reasonably priced small-dollar liquidity products even more important. While various entry-level credit products exist to meet a wide range of these needs, including traditional credit cards, personal loans, and other forms of credit, some consumers unfortunately cannot qualify. When debating policy affecting overdraft service, we urge policymakers to also consider a viable solution to help consumers who need short-term loan options – small-dollar lending.

Today, the need for accessible small-dollar, emergency credit for consumers has never been greater. According to the Federal Reserve, nearly half of all American adults say they cannot cover an unexpected expense of $400. Similarly, Bankrate states "63% of American adults say they are unable to pay an unexpected expense with their savings..." The Financial Health Network (formerly the Center for Financial Services Innovation) study found that more than a third of all households say they frequently or occasionally run out of money before the end of the month. [3]

Banks have been encouraged by policymakers to enter or remain in the small-dollar lending market. Banks worked with regulators to developed products carefully designed to ensure strong safeguards at reasonable prices. It was unfortunate that in 2017, the CFPB finalized a strict and prescriptive rule that restrained lenders' ability to enter into the small-dollar market. The rule's conditions created unreasonable hurdles for loans exceeding 36% requiring compliance costs so great that they negate a banks ability to make small-dollar loans at reasonable cost to consumers. The current leadership at the Bureau, looks to continue the 2017 rule that does not allow lenders to offer a short-term loan product. Consumer demand still exists for a short-term loan product, if allowed, highly regulated banks can make safe, affordable and easy to access small-dollar loans to consumer in need.

The CFPB Fee Inquiry

Heavily shaping the current fee debate, on January 26, 2022, the CFPB issued a Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (RFI).[4] In the RFI, the CFPB seeks public feedback regarding fees, calling out overdraft fees directly, that are not subject to competitive pricing to assist the CFPB in exercising its authority to create fairer, more transparent, and competitive consumer financial markets.

CBA has several concerns we would like to bring to the attention of Congress. First, fee amounts and fee disclosures are subject to numerous federal and state laws. Second, fees are a

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[3] https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm

[4] https://www.lenderlawwatch.com/wp-content/uploads/sites/9/2022/02/CFPB-Junk-Fees.pdf.

necessity that allows lenders to recoup operational costs, mitigate risk and can even act as a deterrence that may avoid repeated use by a customer. Finally, by characterizing various, disconnected charges as "junk fees," the Request serves to confuse consumers and undercut the purpose and utility of disclosures that regulators have worked so hard to police and implement.

The disclosure of fees is a highly prescriptive area of banking regulation. A myriad of federal and state laws govern fee disclosures and these statutes have been in place, in some instances, for over half a century. For example:

- The Truth in Lending Act (TILA), with its consumer-friendly, common-sense disclosures, has been federal law for more than 50 years.
- The Bureau oversees administration of Regulation Z, requiring disclosure of fees in account opening disclosures and in periodic statements for a number of different products, including open-end credit and closed-end credit. Regulation Z prescribes disclosures in readily-accessible, tabular format, highlighting the key terms that consumers focus on and providing, front and center, an easy-to-read snapshot of the key information associated with consumer credit products, including any fees associated with those products.
- The Electronic Funds Transfer Act, 15 U.S.C. §§ 1693, *et seq.*, and its implementing regulation, Regulation E, 12 C.F.R. Part 1005, administered by the Bureau, regulate disclosures of fees associated with ATM transactions, overdraft fees, NSF fees, periodic fees for prepaid accounts, and service or dormancy fees for gift cards, to name a few.
- Regulation DD, 12 C.F.R. Part 1030, governs fee disclosures in deposit accounts.

Financial institutions of all sizes carefully follow the rules that oversee fees and closely adhere to the numerous laws and regulations that govern the disclosure and imposition of various fees. The Bureau, since its inception, has played a central role in regulating how these fees are communicated and charged to consumers.

Federal and state agencies routinely monitor the adequacy of disclosures made to consumers about fees. The Bureau itself consistently engages in enforcement actions where it believes entities, including banks and financial institutions, have failed to disclose properly the fees associated with any consumer product. Indeed, not six months ago the Bureau engaged in such an enforcement action, finding that a financial services company "provided consumers with inaccurate or incomplete information about the fees it assessed."[5] The Bureau has been swift to act where it perceives problems, with the agency's most important and effective enforcement actions coming in directed, targeted efforts to address the practices of individual bad actors, rather than overbroad generalizations that sweep the entire industry into its crosshairs.

[5] *See In the Matter of JPay, LLC*, File No. 2021-CFPB-0006 (Oct. 19, 2021); https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/.

Congress charged the Bureau with enforcing federal consumer law consistently, "in order to promote fair competition."[6] With individual financial institutions disclosing, fully and completely, what their fee practices entail, consumers can make informed choices. The Bureau itself provides information designed to help consumers understand overdraft fees and comparison shop between different financial institutions.[7] In the 2021 Curinos study[8] on overdraft fees, consumers surveyed see benefit in overdraft protection products, with nearly two-thirds of respondents indicating that triggering an overdraft payment was a conscious choice. Further, because of greater competition in the market, including competition from fintech institutions, the Curinos study showed the rate of overdraft fees per U.S. adult has declined by 77% since 2008 and overdraft transactions now cover larger, and potentially more important, transactions. Consumers are more likely to open new accounts or increase checking account activity with banks that offer overdraft innovations, with traditional banks and fintechs who offer consumer-friendly overdraft and overdraft alternatives experiencing a 40% improvement in account acquisition since 2017, compared to a decline of almost 30% for non-innovators. Market competition – a force that the Bureau has consistently referred to for its critical importance – has driven financial institutions to address gaps in their product suite and will continue to require banks to provide consumer-friendly overdraft products.

Whether you are a bank or a box store, businesses remain in operation by the net revenues they receive by offering a product or service and charging a fee for those products and services. Banks and financial institutions are not the only place where consumers encounter fees. The federal government regularly charges fees as a penalty or to mitigate costs. A late payment to the IRS triggers a fee, a parking ticket results in a fee, even state and local governments charge fees for a variety of services. As the Curinos study showed, many consumers are willing to incur a fee for the ability to use overdraft products when making purchase decisions. Bank fees are highly disclosed and in the case of overdraft there is an "opt in" requirement that the customer must choose. An increasing number of consumers look to disclosures to better understand how fees are applied and, in some cases, how to make fees work for them as a daily function of their financial decisions.

Conclusion

Banks provide access to safe, well regulated, high-quality consumer products and services, and have invested significant resources toward innovating overdraft services for consumers' long-term benefit. We encourage policymakers to work with all stakeholders to avoid any unnecessary restraint on bank products or services by carefully considering all of the options available that could prevent those most in need the ability to have their financial needs

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[6] 12 U.S.C. § 5511(b)(4).

[7] *See* "Comparing overdraft fees and policies across banks," by Rebecca Borné and Amy Zirkle (Feb. 10, 2022); https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/.

[8] *See* "Competition Drives Overdraft Disruption," 2021 Study. https://curinos.com/wp-content/uploads/2021/11/Curinos_2021-Competition-Drives-Overdraft-Disruption-web.pdf.

addressed. CBA appreciates the opportunity to be provide our thoughts to the Subcommittee and we remain eager to work with you on our shared commitment to improve financial opportunities for all Americans.

Sincerely,

Richard Hunt

President and CEO

Appendix A: Bank Overdraft Innovations
Appendix B: Curinos 2021 Overdraft study, "Competition Drives Overdraft Disruption"

Appendix A

Overdraft Innovations

FROM AMERICA'S LEADING BANKS

CONSUMER BANKERS ASSOCIATION

Over the past year, a growing number of banks have unveiled new innovations designed to avoid overdraft fees or have an overdraft product with features selected by the consumer. Strategic technological investments have ensured banks are well-equipped to incorporate many of these features through digital platforms, further empowering consumers with the tools they desire to make informed financial decisions.

Ally Financial

Previously announced it would eliminate overdraft fees altogether, and unveiled CoverDraft, a new tool to provide customers additional short-term liquidity as an alternative to traditional overdraft.

Bank of America

Eliminated overdraft for consumer clients when using debit cards at the point of sale and ATM, eliminated overdraft protection transfer fees, eliminated courtesy overdraft and non-sufficient funds fees, and reduced all other overdraft fees to $10.

Capital One

Announced it will completely eliminate all overdraft fees and non-sufficient fund (NSF) fees for its consumer banking customers, while continuing to provide free overdraft protection.

JPMorgan Chase

Expanded the overdraft cushion to $50 and eliminated the Returned Item Fee. Beginning next year, the bank will provide an additional day to settle outstanding balances and will expand early direct deposit access to all customers.

Citi

Announced it will eliminate overdraft fees altogether, and will continue to cover overdraft protections through two services: Safety Check and Checking Plus.

Citizens Bank

Introduced Citizens Peace Of Mind, a new deposit feature added to all checking accounts in October aimed to provide customers with the ability to avoid the expense of unexpected overdraft fees.

Fifth Third Bank

Now offers low-cost deposit accounts, Early Pay direct deposit and the Momentum Banking account which affords extra time to make deposits, including advance funds up to $50 against future direct deposits.

Frost Bank

Customers are automatically enrolled in the overdraft grace feature, offering no-fee overdrafts up to $100.

Hancock Whitney Bank

Hancock Whitney announced plans to eliminate consumer non-sufficient funds fees as well as certain overdraft fees. Additionally increasing existing overdraft balance threshold before fees are assessed.

Huntington Bank

Huntington launched Standby Cash, a line of credit giving eligible customers immediate access up to $1,000 with no interest or fees if customers sign up for automatic payments.

M&T Bank

Announced plans to cut overdraft fees in half while also eliminating nonsufficient fund fees, and any charges customers pay when they transfer money from a linked deposit account to avoid an overdraft.

PNC

Introduced Low Cash Mode to help customers avoid overdraft fees through account transparency and control to manage low-cash moments or mis-timed payments.

Regions

Customers benefit from Regions Now Checking, providing a flat $5 monthly fee to avoid any overdraft or non-sufficient funds fees, and will eliminate overdraft protection transfer fees.

TD Bank

Introduced TD Essential Banking, a low-cost, no-overdraft-fee deposit account. TD will also eliminate fees for overdrafts of $50 or less and give customers 24 hours to fix the issue before incurring a fee.

Truist

Introduced new personal checking accounts with no overdraft fees and an innovative deposit-based line of credit. Discontinuing returned item, negative account balance, and overdraft protection transfer fees for all existing personal accounts.

U.S. Bank

Ending non-sufficient fund fees for checking accounts. Also increasing the amount an account can be overdrawn from $5 to $50 before a fee is charged. Customers will now have a full day to deposit funds to avoid overdraft fees.

Wells Fargo

Eliminated transfer fees for Overdraft Protection and NSF fees for checks and electronic transfers, added a grace period for overdraft repayment, and provided early access to direct deposits and access to a new short-term credit product.

Appendix B

December, 2021

curinos

Overdraft and Short-Term Liquidity

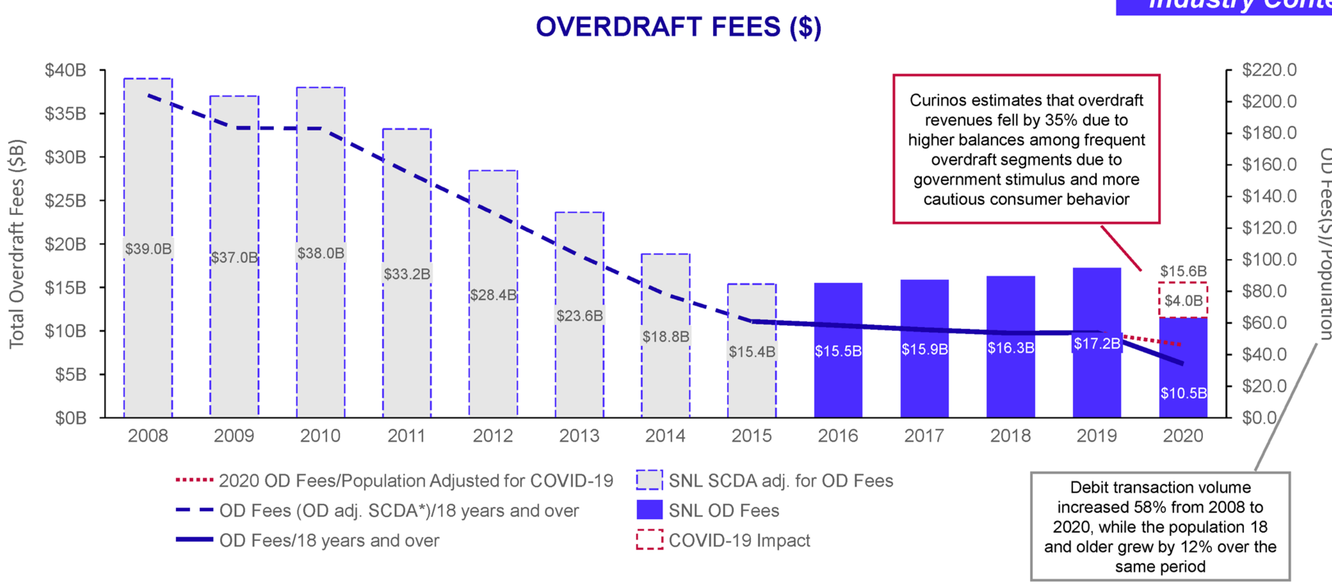
Discussion

Executive Summary

- CBA and its membership engaged Curinos to evaluate the state of the overdraft market in the US in anticipation of a regulatory shift related to the change in administrations.
- Curinos undertook a comprehensive study of the issue from the following perspectives:
  - Literature review of prior consumer advocacy, regulatory, and industry research as well as recent news articles
  - A competitive review of Financial Institution offers and disclosures
  - Consumer research including financial services shopping behaviors and overdraft behaviors
  - A blind survey of Financial Institutions to understand the change in consumer behaviors since 2011 when CFPB pulled the data for is Overdraft Data Points.
- Curinos found:
  - Overwhelmingly FI's have adopted regulator and consumer advocate proposed reforms driving OD income down by over 50% since the CFPB's 2011-12 datapoint data was collected.
  - Consumers representing an overwhelming majority of overdraft transactions understand the product and seek lower cost alternatives.
  - Competition is rapidly redefining the market and driving down margin.
- In this discussion we will review our findings and potential implications of our insights.

Since the GFC, we have observed a 77% reduction in overdraft fees per capita adjusting for population and transaction growth

Industry Context



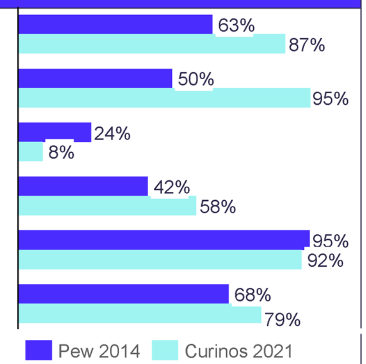
curinos
Proprietary and Confidential

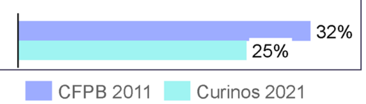
Source: SNL Financial (2008 – 2020), Curinos analysis, US Census Bureau, 2019 US Federal Reserve Payments Study | Overdraft Fees 2015-2020 sourced from call reports of commercial banks, savings banks, and savings & loans: Service Charges on US Deposit Accounts - Overdraft | *Overdraft Fees 2008-2014 estimated with SCDA data from SNL, Curinos Analysis | OD/Population normalized by transaction volume

Much of the decline has come from policy reforms FIs have adopted since the GFC

From 2012-2015 regulators and consumer advocates identified several opportunities for banks to improve the customer centricity in overdraft	**We have reviewed 38 banks that overlap with the Pew study, and found that practices have changed dramatically**

KEY OPPORTUNITIES	DELTA	2014 vs 2021
Disclosure Clarity	**+38% increase in adoption of Pew/Transparent Disclosure**	
Improved Posting Order Practices	**95% or more have adopted revenue agnostic or minimizing posting orders**	
Not Offering Debit Card Overdraft	**66% increase in banks giving consumers choice over debit card overdraft**	
Removing Continuous Overdraft	**-27% charging continuous OD fees**	
Using Daily Item Caps	**- One bank removed a daily item caps, but caps are generally lower than 2014**	
Using De-Minimis Limits	**+15% increase in banks with de-minimis limits rising to $7 on average**	
Reg E Opt-In	**22% fewer customers opting into debit card overdraft**	





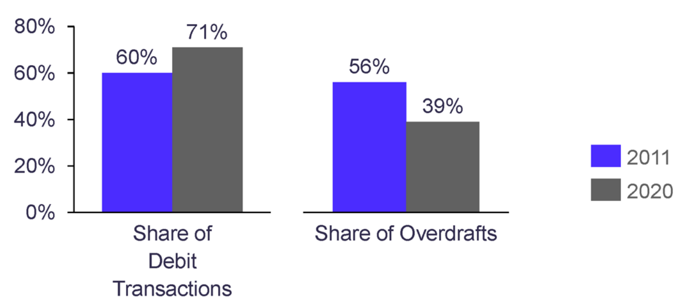
curinos
Proprietary and Confidential

Sources: 1. Checks and Balances Report, Pew Charitable Trusts, 2013-2014; 2. Curinos Analysis of Disclosure Agreements 2021; 3. Understanding Consumer Choice: A Review of Consumer Overdraft Behaviors, Novantas, 2015. | *all banks surveyed by Pew in 2014. Among banks both surveyed by Pew in 2014 and Curinos in 2021, 100% capped the number of daily Overdrafts

These reforms are reflected in the mix and magnitude of overdraft instances and value

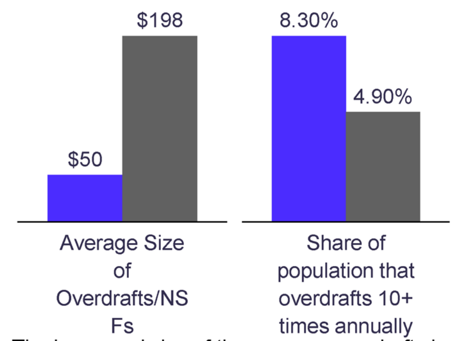
Industry Context

DEBIT CARD TRANSACTIONS



- As a result of the industry's policy & practice changes, debit card transactions are now much less likely to result in an overdraft
- In fact, debit cards no longer account for even the majority of overdrafts

ALL OVERDRAFTS AND NSFS

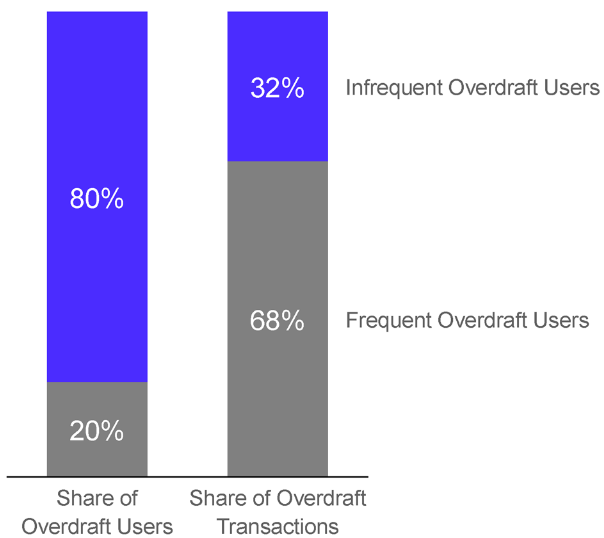


- The increased size of the average overdraft shows the proverbial $35 cup of coffee has been mitigated
- Overdrafts are less than half as likely to occur on a given debit transaction now than in 2014

Share of Debit Transactions: Calculated based on Federal Reserve payments study – 2019 used as 2020 is not available
Share of Overdrafts, Size of Overdrafts, Share of debit transactions that are overdrafts: 2011 from CFPB's 2014 *Data Point: Checking Account Overdraft* and 2020 from Novantas 2021 study of CBA bank data

Not all overdraft users are the same

Of the 25% of consumers who use overdraft…



Infrequent Overdraft Users:
- Comprise the majority of overdraft users, but account for a minority of overdraft transactions
- Tend to overdraft by mistake more often
- Tend to be lower income

Frequent Overdraft Users:
- Represent a minority of users, but account for a majority of overdraft transactions
- Tend to view overdraft as a source of credit
- Distributed across the income spectrum

Source: Novantas 2021 Financial Institution Survey | Infrequent Overdraft User defined as 10 or fewer overdrafts within the prior 12 months. Frequent Overdraft User defined as more than 10 overdrafts within the prior 12 months. These definitions intentionally align to CFPB Data Point reports on overdraft.

While some frequent overdrafters are impacted by low cashflows, attitudes towards money define a greater portion

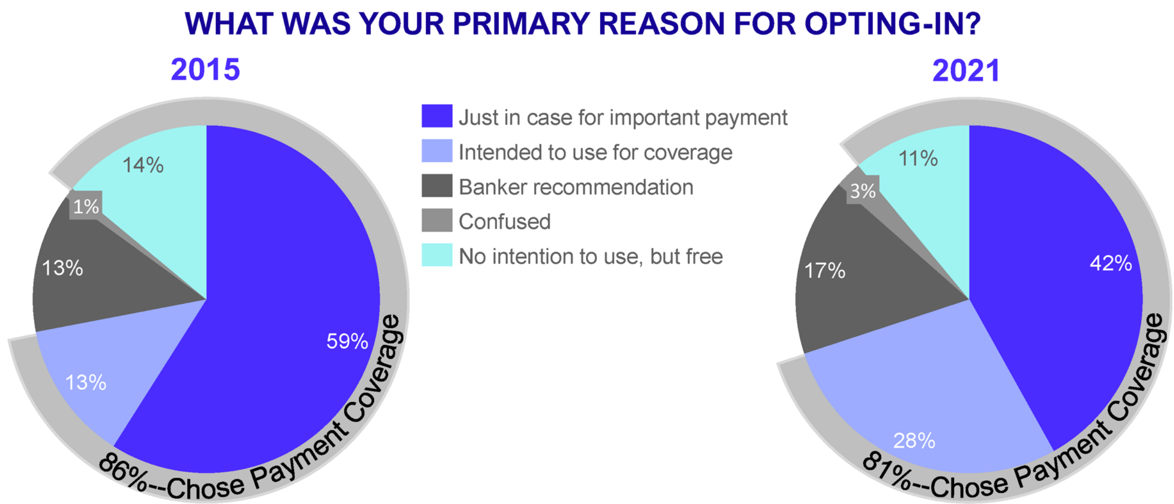
The four clusters below include **all Frequent Overdraft Users**, as well as Infrequent Overdraft Users and Non-Users who share their attitudes and demographics

Most Likely to be a Frequent Overdraft User ⟷ **Least** Likely to be a Frequent Overdraft User

	Lifestyle Users	Limited Options Users	Overconfident Managers	Risky Avoiders
% of group who are **Frequent Overdraft Users**	38%	16%	12%	7%
Financial Factors (Credit Score, Income, Savings)	High	Low	Above Average	Below Average
Defining Traits	• Don't manage their day-to-day finances well and feel out of control • Very important that others think they are financially successful • Use overdraft as payment coverage	• Pessimistic about financial future and feel a lack of control • Struggle with debt and paying their bills • Opted-in for a safety net or to use as payment coverage	• Confident in their ability to manage their day-to-day finances • Confident about financial future and present • Important that others think they are financially successful	• Worried about unexpected expenses and view overdraft as a safety net • In control and confident about managing their money • What others think about their financial success is not important

Source: Curinos 2021 Overdraft Study | Total N = 2,059 | Frequent Overdraft Use defined as more than 10 overdrafts in the prior 12 months
Note: The precise size of these clusters within the population is not known, but "Risky Avoiders" is the largest cluster under any weighting scheme

Which explains why when we talk to consumers, we find that overdraft is much more intentional, starting with debit card opt in…

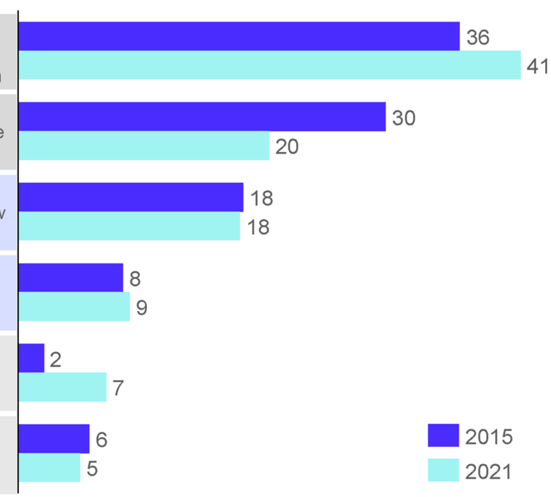


Source:
Novantas 2021 Overdraft Study N = 690 recall opting in
Novantas 2021 Overdraft Study N = 1,027 recall opting in
Weighted Average on OD items (of Opt-In Respondents) from CFPB DataPoint

… and ending with intentionality when they use overdraft

Thinking back to your most recent overdraft experience, what was the cause?

Category	Question
Consumer Choice	I knew I was running low, and I used overdraft to make sure my payment went through
	I knew I was running low, and hoped my deposit would make it before my purchase
Account Management	I did not know I was running low
	My spouse withdrew funds or did not put in a deposit
Error & Other	The bank made an error
	Other



Weighted average of OD Respondents based on 2014 CFPB Data Point. Source: Novantas 2021 Overdraft Study N = 2251 | Novantas 2015 Overdraft Study, N=1724

Despite intentionality, consumers want alternatives, and challengers are meeting their demands with an array of capabilities

AREAS OF PRODUCT INNOVATION

Safe Money Accounts – No Overdraft	No Charge Cure Periods	Free Overdraft	Early Access Direct Deposit	Immediate Check Deposit Availability	No Interest Deposit Advance	Small Dollar Lending	Financial Wellness Tools/Coaching
Initiated by regulators and consumer advocates, Safe Money Accounts do not charge or allow for overdraft from consumer-initiated transactions	Pioneered by Huntington, with offerings from PNC and Wells Fargo, provides notification of overdraft and up to 48 hours to fund the account to avoid the fee	Provides a known limit and no charge for negative balances	Providers are making ACH credits available based on the receipt rather than settlement of item when the FI is credited by the clearing bank up to 2 days early	Working with clearing partners, banks have enabled consumers to receive instant availability of check deposits, reducing the deposit clearing delay for a fee	Offered exclusively by Neobanks and Fintechs today, No Interest Deposit Advances provide consumers with liquidity to avoid overdraft fees charged by other banks.	Traditional players introduced small loans as an alternative to overdraft for small dollar liquidity. Neobanks have begun to integrate small loans into deposit accounts as automatic protection against overdraft fees	FinTech plays to help consumers change their spending habits through cognitive behavioral therapy or financial coaching to address the root cause of avoidable overspending

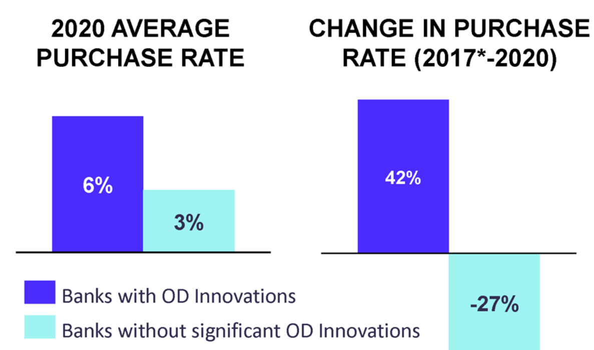
The market has rewarded overdraft innovators with larger acquisition share

OVERDRAFT UNDER PRESSURE From 2012-2015 regulators and consumer advocates applied pressure to banks to reduce overdraft fees

REDUCED COST AND FLEXIBILITY In response, banks introduced checking accounts that promised no overdraft fees, by removing the ability for consumers to overdraft. Though well intentioned, uptake was low.

MEETING NEEDS AT LOWER COST Led by neobanks, a new set of overdraft innovations has emerged. Banks are providing short term liquidity to consumers – at low or no cost.

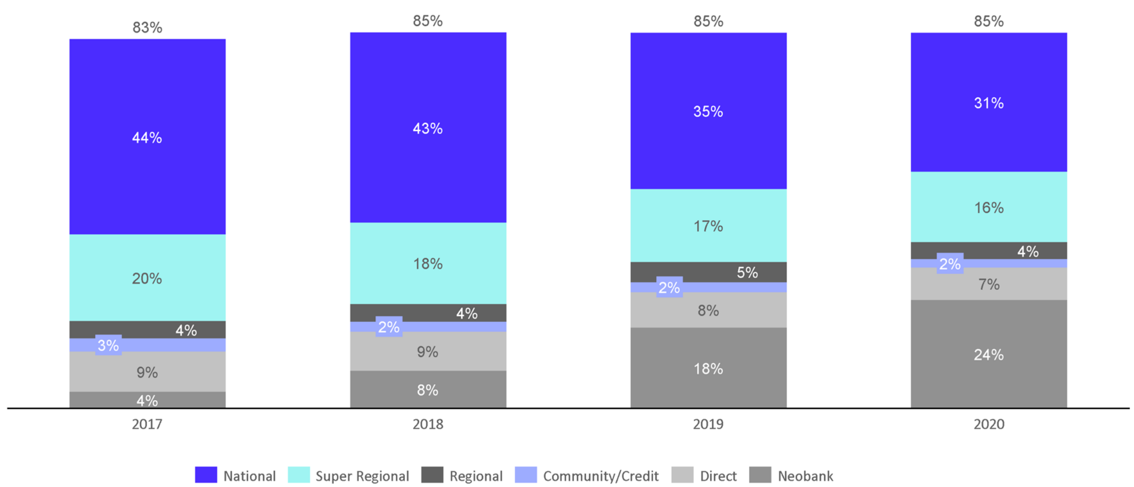
The **market has responded**, and consumers have rewarded overdraft innovators with their business. The Novantas Shopper Survey, an annual measure of consumer behavior and sentiment shows **higher purchase** rates for banks who have **met the needs of consumers** through innovative overdraft offerings and products



Source: Curinos/Novantas Customer Knowledge | US Shopper Surveys 2017-2020
Note: Bank scores are calculated across markets each bank is present in

The shift contributes to our observed shift in acquisition share of checking accounts

YEAR PRIMARY CHECKING ACCOUNT OPENED – PRIMARY BANK TYPE



Source: Curinos Customer Knowledge | 2020 Shopper Survey
2020 (N=10,038)

Summary Findings

Overdraft Revenue Is Down
- ***Gross overdraft fees are down 53%*** from 2011 to Present adjusting for COVID related transaction decline
- ***Per Capita overdraft fees from are down 70%*** adjusting for population and transaction volume growth in the same time period
- Instance rates of overdrafts have fallen from 1/100 transactions to 1/200 transactions in the same time period
- Average overdraft item size has grown from $50 to $198, reflecting changes in FI practices

Consumers Leverage Overdraft Mindfully in Most Instances
- 87% who indicate they have opted in, would do so again if educated on the practice and cost
- 81% of consumers who have opted did so with direct intent to leverage overdraft as payment coverage in deposit aligns
- Consumers representing 61% of overdrafts intended or knew it was likely they would incur an overdraft

Innovation Is Rampant
- Over 15 distinct FIs, ranging in size from the nations largest to regional banks and FinTechs, have brought unique innovations to market benefiting frequent and infrequent overdraft users:
    - Infrequent Overdraft Users: Cure Periods, De-Minimis Limit Expansion, Early Access to Direct Deposits and Checks
    - Frequent Overdraft Users: Free Overdraft, Small Dollar Lending and Financial Wellness tools

The Market Is Rewarding Innovators
- Banks with overdraft features are recognized as more distinctive than those without
- Banks with overdraft features have seen their consumer acquisition grow by ~40%, while those without have seen their acquisition share fall by ~30%

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"

Vincent Mancini & Rachel Gittleman | Consumer Federation of America
1620 I Street, NW - Suite 200 | Washington, DC 20006
609-571-5953 | rgittleman@consumerfed.org

March 31, 2022

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,

[1] *See* 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

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[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*Mjc2ODc2MTk3LjE2NDEzMTY4NjU.*_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 comment 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 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.[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]

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[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/heavyoverdrafters.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.

Credit Union National Association
CUNA

NAFCU
National Association of Federally-Insured Credit Unions

March 31, 2022

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) and the Credit Union National Association (CUNA), we write to you regarding the hearing entitled, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions." NAFCU and CUNA represent America's not-for-profit credit unions and their 130 million members.

Credit unions are member-owned financial cooperatives established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes." Their presence can be found in every state and territory providing an array of banking services to their members, including deposit accounts, credit cards, and small dollar loans. Unlike for-profit financial institutions, credit unions return earnings to members in the form of lower interest rates on loans, higher interest on deposits, dividends, and lower fees. Credit unions have stepped in to serve their communities, especially underserved populations, opening branches in areas banks have deserted.

Overdraft protection is a service that allows a consumer to purchase goods in situations where the payment exceeds the consumer's available balance. In accordance with all relevant laws and regulations, a consumer has affirmatively opted-in to overdraft protection after receiving clear and conspicuous disclosures on the product and its costs. Credit unions offer responsible overdraft protection programs as a convenience to members, and members choosing to opt-in often do so for the peace-of-mind these programs provide.

While legislation limiting the availability of overdraft protection may be well intentioned, it remains critical for Congress to understand that hasty action usurping natural market trends would ultimately lead to less favorable outcomes for the consumers that use responsible overdraft programs. In the member-owned credit union context, arbitrary limitations on overdraft services would not only impact the members that use those services but also the credit union's entire membership.

Credit unions specifically design their programs with their members in mind and, as a result, there is substantial diversity in program features across institutions. Regardless of the specifics, credit unions are well-known to offer fair programs that are often coupled with initiatives intended to assist financially distressed members and provide greater resources to and investment in their communities. From financial counseling to generous fee waiver policies, these efforts support the best interest of the member and exemplify the pro-consumer nature of the credit union-member relationship.

Our associations strongly object to legislation intended to restrict the ability of credit unions to offer overdraft protection options that help members resolve short-term financial difficulties. Credit unions are committed to keeping their members from turning to the underregulated financial services market to meet

Credit Union National Association

CUNA

NAFCU

National Association of Federally-Insured Credit Unions

their liquidity needs. When fully in compliance with applicable laws and regulations, overdraft protection programs from traditional depository institutions serve as an accessible alternative to high-interest, predatory payday lenders or other underregulated creditors.

On behalf of our nation's credit unions and their 130 million members, thank you for the opportunity to share our thoughts ahead of the Committee's hearing.

Sincerely,

Jim Nussle	B. Dan Berger
President & CEO	President & CEO
Credit Union National Association	National Association of Federally-Insured Credit Unions

Credit Union National Association
CUNA

Jim Nussle
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March 30, 2022

The Honorable Ed Perlmutter
Chairman
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of America's credit unions, I am writing regarding the hearing entitled, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions." The Credit Union National Association (CUNA) represents America's credit unions and their 130 million members.

We strongly object to legislation, regulation and other government intervention that restricts the ability of credit unions to offer overdraft protection plans that help members resolve short-term financial difficulties.

General Comment

Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike for-profit financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. Each credit union member has equal ownership in the credit union and one vote—regardless of how much money a member has on deposit. Credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial services companies have with their customers.

As a result, credit unions' interest in their members' financial well-being and advancing the communities they serve takes on paramount importance. As you consider policy changes impacting credit unions and their members, we urge you to consider the impact any changes would have on that mission. We often find that even well-intentioned policy proposals have the unintended consequence of making credit union services less available and more expensive to those who need them the most.

Overdraft protection is a service that allows a consumer to purchase goods in situations where the payment exceeds the consumer's available balance. In accordance with all relevant laws and regulations, a consumer that uses overdraft protection has affirmatively opted-in to the service as part of their account agreement. Credit unions offer overdraft programs as a convenience and accommodation to a members' benefit, and members that choose to opt-in often do so for the peace-of-mind these services provide. In some cases, the opt-in decision was made precisely for the comfort of knowing that transactions would continue to be processed during an unexpected financial emergency or other cash shortfall.

Credit unions strive to keep their members from turning to the unregulated financial services market to meet their liquidity needs. To that end, we caution Congress, the CFPB and other regulators against taking actions that are intended to severely limit the availability of overdraft programs from reputable, regulated financial institutions.

Credit unions provide members with responsible, fair overdraft programs

America's credit unions stand as a unique example of consumer protection in practice in the financial services sector. In contrast to for-profit banks and non-depository providers, credit unions are structured as not-for-profit cooperatives. As part of this structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation.

Because overdraft programs at credit unions are specifically designed with the credit union's membership in mind, there is substantial diversity in program features. For example, credit unions have established programs linking accounts, overdraft lines of credit, courtesy pay programs, and others. In addition, credit unions often couple these programs with other initiatives intended to assist members using overdraft services with the intent of helping the member avoid future or frequent overdraft use. These initiatives include direct member outreach, low-balance alerts, caps on the number of fees per day, financial management and coaching resources, low-interest or share secured credit cards, and small-dollar loans.

There are many examples of credit unions exploring and adopting changes to their overdraft programs. While it's impossible to fully account for the diverse range of services offered by credit unions, these are examples of changes some credit unions have adopted:

- Reducing fees generally;
- Reducing fees on small transactions;
- Reducing or eliminating fees on transactions that result in small negative balances;
- Adding credit cards to the range of linked account options;
- Eliminating transfer fees;
- Automating the fee waiver process ;
- Capping the number of instances fees can be charged per day or another specified period of time;
- Increasing overdraft line of credit limits;[1]

All these changes, and many others, reveal the innovative nature of credit unions and the proactive work that credit unions are doing to secure financial well-being for all.

Irrespective of innovations in overdraft, credit unions have a track-record of establishing policies and procedures aimed at assisting members that frequently use overdraft protection. When a credit union becomes aware of a member's frequent overdraft usage, they often attempt to contact the member to address the member's financial situation and offer financial education support or alternative credit products. In these communications, credit unions inform members about other options that may be available, including financial and budgetary counseling and/or traditional loan products such as personal loans or affordable small dollar loans. These efforts support the best interest of the member and exemplify the pro-consumer nature of the credit union-member relationship.

Credit unions also establish fee waiver and forgiveness programs intended to help members who reach out for assistance. We always encourage financially distressed credit union members to contact their credit union to discuss relief options or learn about alternative products and services. Credit unions are regularly working with their members to improve their financial well-being as helping members in need is common among America's credit unions. We strongly believe credit unions should be allowed to continue working with members to develop customized solutions that help secure their financial well-being rather than Congress adopting wholesale or de facto bans on popular financial services.

This mission-driven, member-focus is a key reason why credit union members are among the most financially healthy in America and agree that their credit union cares about them. According to CUNA's 2022 National Voter

[1] Report "Overdraft Protection Programs: Credit Union Best Practices," Filene Research Institute available at https://filene.org/learn-something/reports/overdraft-protection-programs-credit-union-best-practices.

Poll, consumers who use credit unions are 40 percent more likely than their counterparts who do not use credit unions to respond "very positively" to the fact that they "can trust" their financial institution.[2] Further, credit union members are 45 percent more likely than nonmembers to respond "very positively" to the fact that their institution "cares about" their financial well-being AND are 52% more likely to say their institution "has positively impacted" their financial well-being.[3]

As a recent example of credit unions' member-focused service, the pandemic presented an unprecedented challenge. Regardless, credit unions continued to deliver critical financial services to credit union members throughout the duration of the pandemic, including working with members affected by the economic turmoil. Many credit unions responded to the financial hardships of their members by offering new loan programs, relief for pre-pandemic loans, and other solutions. Overdraft protection was a part of the credit union response to struggling members, with many credit unions reducing fees to nominal levels or increasing the amount of fees they waived.

During the crisis, many consumers purchased critical goods and services intended to help them and their families weather income flow changes or health emergencies. If Congress had acquiesced to pre-pandemic calls to eliminate overdraft entirely, then it is possible the pandemic's financial impact could have been much more significant for some consumers. The notion that banning overdraft services would assist consumers in distress is misguided and, ultimately, calls for such a ban ignore the fact that temporary financial shortfalls will still exist so long as "the unexpected" can still be an expected part of life.

We believe effectively shutting down overdraft services would unnecessarily limit credit unions' ability to assist their members and is ill-advised. Rather, the best and least disruptive path forward would be to continue permitting transactions to be processed and encouraging affected consumers to reach out to and work with their local credit union to reduce or eliminate any fees or to consider other low-cost products and services. Relying on credit unions to do what they do best is preferable to an environment where consumers are getting declined in line at the grocery store or pharmacy, or experience their rent check unpaid.

When considering laws that could limit overdraft options, we urge the Congress to bear in mind the differences between banks and credit unions in offering these programs. A recent report issued by Filene Research Institute on overdraft products found that fees were lower at credit unions than at banks.[4] The credit unions studied had overdraft fees in the $25-32 range whereas banks had fees in the $29-35 range.[5] The report also noted that automated transfer fees for credit union overdraft programs with linked checking and savings accounts ranged from $5-8 and were about half of the fees charged by banks for the same service.[6] While the fees levied at banks versus credit unions may appear similar, it's important to keep in mind that credit unions implementation of relief programs and their responsiveness to member requests for assistance are where credit unions often set themselves apart the most.

Overdraft protection programs are subject to substantial regulation and oversight

Credit unions are strong proponents of robust consumer protections, including clear and conspicuous consumer disclosures. CUNA supports the availability of overdraft programs that are "consumer friendly, transparent plans that are not marketed or promoted to members in a misleading or deceptive manner."[7] In this regard, prudent regulations ensuring such transparency are well-established and part of any reputable financial institutions' consumer compliance management system.

[2] 2022 CUNA National Voter Poll.
[3] *Id.*
[4] *See* Filene Research Institute Report, "Overdraft Protection Programs."
[5] *Id.*
[6] *Id.*
[7] The Compendium of CUNA Policies on Legislative and Regulatory Issues, CUNA (February 2019).

The scope of laws and regulations that currently apply to a depository financial institution's overdraft protection program are extensive:

- The Truth in Lending Act (TILA) and Regulation Z;
- The Truth in Savings Act (TISA) and Part 707 of NCUA's Rules and Regulations;
- The Equal Credit Opportunity Act (ECOA) and Regulation B;
- The Expedited Funds Availability Act and Regulation CC;
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibitions on unfair, deceptive, or abusive acts or practices;
- Laws established by the states applicable to state-chartered credit unions.

While some of these laws only tangentially touch on overdraft programs, many directly impact the consumer experience of overdraft services. For example, the 2009 Overdraft Rule (the rule) amending Regulation E, which implements the Electronic Fund Transfer Act (EFTA), limits the ability of a financial institution to assess overdraft fees unless the consumer affirmatively consents to participating in the overdraft program. While no rule is perfect, credit unions are familiar with these disclosure requirements and have effectively managed their ongoing compliance with the rule. Consumers are primarily made aware of their rights because of these disclosures. In response to a recent statutorily required review of the rule, CUNA called on the Consumer Financial Protection Bureau (CFPB or Bureau) to avoid amending the material provisions of the rule and advised the Bureau to keep in mind the personal choice consumers make when they opt-in to overdraft services for the comfort of knowing transactions, especially necessary or emergency purchases, will be honored.[8] Consumers should always be permitted the right to choose their financial products.

It is critical to bear in mind that credit unions are regularly examined for compliance with the above listed laws and regulations governing overdraft. It is even possible for a state-chartered credit union to be subject to more than one examination in a given year depending on the schedules of their state examiner and the National Credit Union Administration (NCUA or agency). The NCUA recently announced overdraft programs would be a supervisory priority in 2022 and stated credit union examiners will "request information about overdraft policies and procedures, as well as audits of credit union overdraft programs."[9] The information gathered will be used for "a more thorough review of credit unions' overdraft programs in 2023."[10] Clearly, the agency is able to effectively police overdraft programs under the current laws in place and without additional Congressional action. In addition, for entities directly supervised by the CFPB, the Bureau is well-established as a zealous examiner of compliance with the laws in its jurisdiction and nothing about the current state of the law has kept the Bureau from finding and punishing bad behavior in overdraft programs among the nation's largest banks.[11]

Competition and consumer demand have driven market changes for overdraft protection programs

Changes in the competitive landscape of financial services and evolving consumer expectations have led many financial institutions to evaluate and reconsider their approach to overdraft protection and other services. While credit unions often conduct periodic reviews of their overdraft programs to ensure they are competitive with similar financial institutions in their region, an increasing number are exploring new methods to approach their programs and considering new sources of noninterest income.

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[8] Comment Letter to CFPB regarding Overdraft Rule Review pursuant to the Regulatory Flexibility Act, available at https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2019/0701219_2009%20Overdraft%20Rule%20RFA%20Review.pdf (July 1, 2019).
[9] Remarks of NCUA Chairman Todd Harper, 2022 CUNA Governmental Affairs Conference *available at* https://www.ncua.gov/newsroom/speech/2022/honorable-todd-m-harper-chairman-national-credit-union-administration-remarks-cuna-governmental.
[10] *Id.*
[11] *See* Consent Order, *In re* Regions Bank, No. 2015-CFPB-0009 (CFPB April 28, 2015); Consent Order, *In re* Santander Bank, N.A., No. 2016-CFPB-0012 (CFPB July 14, 2016); Stipulated Final Judgement and Order, CFPB v. TCF National Bank, No. 17-cv-00166-PAM-DTS (D. Minn. July 20, 2018); Consent Order, *In re* TD Bank, N.A., No. 2020-BCFP-0007 (CFPB Aug. 20, 2020).

After carefully evaluating the needs of the consumers they serve, many providers have taken proactive steps towards eliminating or making it more difficult for customers to overdraft their accounts. While the changes announced by some of the largest financial institutions have generated the most headlines, credit unions large and small have also responded to this market change by amending their programs as well as eliminating and substantially reducing the cost of overdraft. These changes reflect a healthy system of competition among financial services providers, with the market and consumer choice – not government-mandated bans – being the primary driver. It is not yet clear how these changes will impact the current financial landscape, or how they may factor into longer-term consumer preferences when it comes to banking, but it is a market-driven trend worth paying attention to.

Most importantly, the right of consumers to not only choose their financial institution but also the products and services they use is a pillar of the consumer financial services market and the American economy more broadly. In the overdraft context, consumers are given clear disclosures explaining overdraft protection and the option to choose whether to opt-in to those services or not. The costs of overdraft are not hidden, obscured behind legalese, nor are consumers unaware of the behavior that results in an overdraft: spending more money than one has in one's account. On the average cell phone, dissatisfied consumers have access to more sources of information on the alternative banking options available to them than they ever have in history. As financial institutions review and potentially amend their products and services to meet consumer demands, the market – not restrictive legislation or regulation – is best positioned to determine the future of overdraft protection. To that end, we believe consumers seeking a better banking option will recognize the benefit of credit union membership and join a local credit union, the best financial partner for America's citizens and communities.

Allowing all credit unions to serve underserved areas would improve consumers' financial well-being

We appreciate Congress' concern for the financial well-being of America's consumers, especially low-income consumers. One of the most important things that Congress could do to promote financial inclusion would be to ensure that federal law permits all federal credit unions to serve underserved areas. Under current law, only multiple common bond credit unions are eligible to add underserved areas to their field of membership. In response, CUNA strongly supports H.R., 7003, the *Expanding Financial Access for Underserved Communities Act*, which would allow all federal credit unions to add underserved areas to their field of membership and increase credit unions' ability to serve their community's businesses. Furthermore, the legislation expands the definition of a low-income credit union to include any area that is more than 10 miles from the nearest branch of a financial institution – allowing more credit union to access banking deserts. This legislation is important in the context of policy relating to overdraft protection because it will facilitate credit union membership for many who presently find access to mainstream financial services challenging or nonexistent.

On behalf of America's credit unions and their 130 million members, thank you for holding this important hearing.

Sincerely,

Jim Nussle
President & CEO

SOCIAL WORK

March 15, 2022

The Honorable Ed Perlmutter
Chair
U.S. House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
U.S. House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

RE: Comments to the U.S. House Committee on Financial Services subcommittee hearing on March 31, 2022, "The End of Overdraft Fees? Examining the Movement to Eliminate Fees Costing Consumers Billions"

Dear Chair Perlmutter, Ranking Member Luetkemeyer, and Members of the U.S. House Financial Services Subcommittee on Consumer Protection and Financial Institutions –

Thank you for initiating this important hearing, "The End of Overdraft Fees? Examining the Movement to Eliminate Fees Costing Consumers Billions" on March 31, 2022. As a social work practitioner and researcher with nearly two decades of experience in the field of retail banking and financial services, including research that considers racial disparities, I am submitting my comments about banks' recent announcements to eliminate overdraft fees.

Overdraft fees have garnered significant attention from consumer advocates and policymakers given that these fees operate similarly to the exorbitant interest rates on payday loans and disproportionately affect banks' poor White and racially marginalized customers. And, after decades of research and advocacy documenting the harms of overdraft fees,[1] their possible elimination—along with the punitive and racialized impacts—is welcomed.

During the last several months, numerous banks have advertised plans to change, reduce, or eliminate overdraft fees. These include some of the country's largest banks, which collectively hold a significant share of all deposits.[2] For instance, in December 2021, Capital One announced that it would eliminate nonsufficient funds (NSF) fees and provide customers with free overdraft protection, including raising the amount a customer can overdraw before triggering fees.[3] JPMorgan Chase & Co. announced giving customers one day to restore overdrawn accounts and granting early access to direct payroll deposits.[4] Bank of American and Wells Fargo announced fee changes on the same day in January 2022. Bank of America pledged to eliminate NSF fees and reduce overdraft fees from $35 to $10.[5] Wells Fargo announced plans to offer customers a 24-hour grace period to cover their overdrawn accounts.[6]

My comments address the timing of banks' advertised changes to overdraft fees and my concerns that these seemingly favorable changes disguise banks' other profit-seeking activities and distract from concomitant and worrisome trends. For example, why are banks advertising changes now after decades of resistance? What else is happening in the broader political economy to compel these changes? What are banks' plans for replacing the revenue streams lost from these sizable fees? To begin addressing these questions, I describe the current state of overdraft fees, a recent history of the financial system, trends in public trust, and advances in financial technology or "fintech." Banks' advertised changes should be understood in the contexts of historic and contemporary racialized costs of banking, banks' activities during the Great Recession and Pandemic Recession that harmed customers, noteworthy declines in public trust of banks, and a growing fintech industry that impinges on banks' profits and amplifies customers' surveillance.

Regardless of the reasons for banks' advertised changes to overdraft fees, there are real steps that can be taken right now to eliminate these harmful fees and better ensure that everyone who wants a transaction account can afford one. Policymakers should require all banks to offer free low- or no-cost transaction accounts without exorbitant overdraft charges in all of their markets, with robust advertisement and information campaigns to reach low-income customers. This is similar to legislation that was enacted in Canada in 2001 that required all banks to offer a low-cost account of no more than $4 per month regardless of customers' employment status or criminal background.[7] Moreover, Canada's Bank Act (1991, Sec. 458.1) allows households to cash checks from the federal government at banks free of charge, even without being an existing customer. Banks are required to cash checks up to $1,500. In the U.S., legislation like the Automatic Boost to Communities Act, Banking for All Act, and SAFE Banking Act would all be important steps in this direction.

Private banks have been unable or unwilling to support full financial inclusion despite operating in the U.S. for nearly two centuries. We have all spent much time trying to convince and cajole private banks into providing the most basic of financial services to poor White, racially marginalized, and other historically excluded customers, which they continue to fail to do. If private banks remain unable or unwilling to take the steps necessary for creating equal, dignified access to retail financial services, then they should step aside and enthusiastically support options such as postal banking, public banking, mission-driven Community Development Financial Institutions (CDFIs), and mutual aid or solidarity economy networks, which are dedicated to serving people in need without charging expensive fees and adding to burdensome debt. And in so doing, we could put more time towards envisioning and creating a banking and financial system that is equitable, sustainable, and generously invested in the public it should be designed to serve.

Thank you for the opportunity to offer my comments.

Sincerely,

Terri Friedline

Terri Friedline, PhD
Associate Professor of Social Work
University of Michigan

The State of Overdraft Fees

Overdraft fees are an important source of revenue for banks. As Devin Fergus reports in his book, *Land of the Fee*, banks' revenue from overdraft fees alone increased from $200 million in 1984 to billions of dollars by 2009.[7] Over the last decade, banks have generated between $10 and $12 billion in overdraft fee revenue per year with steady annual increases of 2% and 5%.[8] Banks reportedly collected $12 billion in overdraft fee revenue in 2019 before the amount plateaued to around $6 billion in 2020 and then increased to pre-pandemic levels.[9] The third and fourth quarters of 2020 were banks' most profitable of the year for overdraft fees, which coincided with widespread COVID-19 infections and a skyrocketing unemployment rate.[10] These fee patterns are similar for small community banks and credit unions,[11] with some analysts suggesting that overdraft fee revenue makes up an even greater share of total profits at smaller institutions.[12]

Overdraft fees operate a lot like payday loans, as consumer advocacy groups have documented.[13] The average transaction amount that triggers a negative account balance is $4, or about the cost of a cup of coffee. However, banks charge an average overdraft fee of $34—essentially an 800 percent average annual interest rate that is nearly double the average rate charged by payday lenders.[14] In addition to charging similar interest rates, there is evidence that banks cooperate with payday and other high-cost lenders in charging overdraft and NSF fees. Among payday loan borrowers who take out loans online, half accumulate an average of $185 in overdraft fees and other bank penalties.[15] Payday lenders trigger overdrafts and account closures when they take their payments directly out of borrowers' bank accounts[16]—a practice the CFPB's original rule on small-dollar lending aimed to prohibit.[17]

Overdraft fees are also racialized, meaning that a significant portion of banks' revenue from these fees comes from racially marginalized customers. Whereas income and poverty are determining factors for White customers, racially marginalized customers pay more in overdraft fees regardless of their financial standing. Banks disproportionately charge overdraft fees to Black and Latinx customers, with Black customers paying about $190 more in total checking account costs and fees when compared to White and Asian customers.[18] Involuntary account closures due to these fees occur more frequently in counties with higher populations of poor and Black residents, even after controlling for a range of demographic characteristics like education, employment, and income.[19]

A Recent History of the Financial System

Banks' advertisements to change, reduce, or eliminate overdraft fees should be interpreted within historical context,[20] including recent and significant economic recessions. The United States has experienced several recent economic upheavals with implications for the financial system, including consumer or retail financial institutions. Banks received widespread criticisms for their practices and activities during the 2007 Great Recession and the 2020 Pandemic Recession. Congressional hearings, including previous hearings convened by the U.S. House Committee on Financial Services, have tried to hold banks accountable for their roles in harming consumers and the economy.

The Great Recession that peaked between 2007 and 2009 significantly impacted households' financial circumstances and wealth holdings,[21] especially through the foreclosure crisis. The typical Black household lost 53% of their already-limited wealth compared to 16% of the typical White family[22] and banks contributed to these disparities by engaging in racially-targeted subprime lending.[23] Black women were especially impacted.[24] Bankers' own testimonies in mortgage lending lawsuits revealed intentional discrimination, including lawsuits brought to the U.S. Department of Justice Civil Rights Division. According to research by Douglas Massey and colleagues, bankers and loan officers "referred to subprime loans in minority communities as 'ghetto loans' and minority customers as…'mud people,'"[25] alluding to the structural nature of racism in the financial system.[26] Regulators—including the Consumer Financial Protection Bureau (CFPB) that was established in 2010—stepped up scrutiny over banks' practices and activities, and North American banks have paid over $200 billion in fines since 2007.[27]

People around the world gathered as part of the Occupy Wall Street movement to express anger and frustration at financial institutions for their roles in the Great Recession. Protestors in the United States criticized massive bailouts that private banks received from the federal government. Hundreds of thousands of people participated in the Occupy Wall Street movement with protests in financial districts of over 600 U.S. cities.[28] At the time, 40% of U.S. adults supported the Occupy Wall Street movement and 77% agreed that rich people and corporations, including banks, held too much power.[29]

Indigenous-led protest movements and protests connected to Occupy Wall Street also criticized private banks for financing and investing in environmentally-harmful development projects. In an era when the world is greatly affected by climate devastation, banks' enabling of coal mining and oil pipelines is cause for concern. For example, activists have led calls to divest from banks that financed the Dakota Access Pipeline (#NoDAPL).[30] In a unanimous city council vote in 2017, Seattle became one of the first cities to promise withdrawing their money from Wells Fargo as punishment for their financing of the Dakota Access Pipeline.[31] The Los Angeles city council voted to divest from Wells Fargo just a few months later.[32] These financing and investment activities have understandably wrought significant public ire given that the most recent climate reports foretell of impending planetary catastrophes without immediate divestment from fossil fuels.[33]

The effects from the Great Recession were still part of routine, daily life when the rapid spread of the novel coronavirus, COVID-19, helped to induce the Pandemic Recession in 2020. Nearly 22 million workers filed for unemployment during a four-week span in March and April 2020—more than a 2,000 percent increase from the number of claims filed during a comparable pre-coronavirus time frame and five times greater than the number of claims filed during the worst period of the Great Recession.[34]

Banks again received widespread criticism for their practices and procedures during the Pandemic Recession, including acting in ways that worsened the effects of the recession for many families. The CFPB received nearly 55,000 complaints related to checking and savings accounts between March 2020 and February 2022 (compared to only 37,000 complaints during the same time frame two years prior to the pandemic). These complaints included overdraft fees. Banks were criticized for charging overdraft fees while people were experiencing financial devastation.[35] Banks also automatically garnished economic stimulus payments that were direct deposited into customers' accounts in order to repay overdraft and other debts.[36] Banks prioritized their own customers when processing small business loan applications which led to the program disproportionately advantaging White-owned businesses.[37] And while many people faced devastation, private banks were set to surpass the annual profits they accumulated pre-pandemic.

Declines in Public Trust of Banks

Given this recent history, it is unsurprising that, on average, public trust in private banks is waning. When the Federal Deposit Insurance Corporation (FDIC) began surveys in 2009 that measured reasons that households did not have bank accounts, 7% of respondents indicated lack of trust as a concern.[38] Ten years later, after the Great Recession and on the cusp of the Pandemic Recession, the FDIC's 2019 report indicated that this percentage rose to 36%. Today, 63% U.S. adults report having "some" or "very little" confidence in banks in 2021[39]—a percentage that remains consistent regardless of respondents' political affiliations.

Banks' unpredictable costs and fees and concerns regarding surveillance may underlie the decline in public trust. People's economic circumstances are increasingly precarious as a result of stagnating incomes, persisting wage inequalities, and rising debt burdens.[40] As the costs of everyday living have become more expensive, poor families are less able to afford the high costs and fees that banks charge for opening and maintaining a transaction account.[41] In the FDIC's 2019 report, among reasons for not having a bank account, 49% of respondents indicated that they don't have enough money to maintain an account and 31% indicated that fees are too unpredictable.

People's rightful concerns about rising surveillance[42] may also contribute to declines in trust and confidence. Concerns about privacy related to bank account status have increased 10 percentage points over the last few years. The first time the FDIC measured privacy was in 2013, and 26% of households reported this as a reason for not having a bank account.[43] In 2019, 36% of households without a bank account indicated that "avoiding a bank gives me more privacy." In an era where surveillance is increasing across multiple contexts, and especially as banks and financial institutions rely on technological advances,[44] safety and privacy may become more important for understanding declines in trust and confidence.

Banks' overreliance on technology makes everyday aspects of retail banking more opaque for customers.[45] This contributes to less transparency about costs and fees and also raises concerns in other important areas like identification and "Know Your Customer" or KYC laws. Banks—like technology companies—collect substantial amounts of data and information on customers. There are real concerns that banks can disclose personal data and information in ways that harm customers, such as sharing data with police and Immigrations and Customs Enforcement (ICE). Some banks have asked customers about their citizenship status during retail transactions and righty signaled customers' alarms about their safety.[46] Surveillance can make using money and conducting routine transactions dangerous—for poor White, immigrant, and racially marginalized customers and for Black customers, in particular.

The extent to which trends in public trust are connected to surveillance, so too should the racialization and disparate impacts of surveillance. While marginalized groups are disproportionately harmed by surveillance, there are widespread implications for everyone in society. In her book, *Dark Matters*, Simone Brown connects contemporary surveillance to slavery and its afterlife, writing, "Racializing surveillance is a technology of social control where surveillance practices, policies, and performances concern the production of norms pertaining to race and exercise a 'power to define what is in or out of place'…[H]ow things get ordered racially by way of surveillance depends on space and time and is subject to change, but most often upholds negating strategies that first accompanied European colonial expansion and transatlantic slavery that sought to structure social relations and institutions in ways that privilege whiteness."[47] In recent testimony to the U.S. House Committee on Financial Services, Chris Gilliard observed, "Because of how algorithms are created and trained, historical biases make their way into systems even when computational tools don't use identity markers as metrics for decision making, but because of preexisting social realities and also because of the ways that so many different data points can serve as proxies for prohibited categories."[48] Surveillance remains a critical area of study for understanding banks' and technology companies' practices and activities, including implications for public trust and confidence.

Advances in Financial Technology

The growing financial technology or "fintech" industry also helps to understand banks' recent advertised changes to overdraft fees.[49] Fintech refers to an array of customer- and institution-facing digital technologies that includes data algorithms, mobile banking applications, blockchain and distributed ledger technologies, digital currencies, and payment systems. People use fintech when they use online banking or peer-to-peer payments, while banks leverage fintech for their back-end processes like algorithmic credit scoring and lending risk models. A lot of discussion about fintech focuses on customers at the level of retail transactions; however, banks have been advertising the benefits of these technologies to other financial service and technology companies since at least the 1990s, alongside advancing Internet capabilities. Therefore, it is important to be aware of and investigate how banks use these technologies at corporate levels, as well.

As I wrote in a recent article for *The American Prospect*, banks' recent advertisements about changes to overdraft fees are part of jockeying with the fintech industry over profits, "For decades, banks have ignored people's demands for the elimination of overdraft fees, free or low-cost checking accounts, and low-interest loans and mortgages that would have come at the expense of their bottom lines. While some banks have framed their recent decisions to discontinue overdraft fees as part of commitments to advance racial equity, these decisions coincide with competition from tech companies and threats of federal regulation and oversight. In actuality, retail banks spend about $60 million per year on lobbying efforts to avoid demands from public policymakers requiring them to offer affordable products and services."[50]

Fintech companies have cut into banks' customer base with promises of transaction accounts without overdraft fees; and, fintech companies have been relying on interchange fees to generate profits. According to Michael Moebs, CEO of the financial industry research and consulting firm Moebs Services, "The fintechs mount the greatest overdraft challenge."[51] Moebs is further referenced in predicting how overdraft fees will evolve, "Despite the heightened political focus on fees and other financial fairness issues, Moebs doesn't see overdrafts, nor the revenue they generate, going away, but it will increasingly take a different form…[A]s Moebs recommends, [banks should] lower the price to less than $20 per overdraft and raise the limit. The average industry overdraft limit remains where it's been for years—$500. That's the amount a consumer can overdraft up to. Moebs urges banks and credit unions to raise the limit to a minimum of $1,500 and lower the price below $20 and 'consumers will love you.' It reduces their cost and gives them more of a cushion should they make a mistake, he explains. Ultimately the bottom line impact will be nil, Moebs maintains, because people will overdraft more as a result." Moebs' quotes are important here, because his company is frequently cited in news reports as a source of banks' overdraft fee revenue.[52]

Banks may be hoping to improve relationships with their customers and garner good favor by advertising changes to overdraft fees, despite the changes having little negative (if any) impacts on their bottom lines. Meanwhile, like fintech companies, banks may be planning to generate more profits from interchange fees, which are less transparent and harder for the public to discern the impacts of these fees. Banks' revenue from interchange fees has already been increasing at annual rates of about 7%—a higher annual percentage point increase than overdraft fees—and generated $24 billion in revenue in 2019.[53]

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[1] Researchers at the Federal Reserve Bank of Richmond and legal scholars published discussion including concerns of overdraft and nonsufficient funds (NSF) fees in the 1987s. The Center for Responsible Lending has published reports that present concerns with overdraft fees since at least the early 2000s. The Bank On movement has been working since the late 2000s to cajole resistant banks into adopting account features that are more favorable to low-income customers.
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Submitted Electronically

March 31, 2022

The Honorable Ed Perlmutter (D-CO)
Chairman
House Financial Services Committee
Subcommittee on Consumer Protection and
Financial Institutions

The Honorable Blaine Luetkmeyer (R-MO)
Ranking Member
House Financial Services Committee
Subcommittee on Consumer Protection and
Financial Institutions

Chairman Perlmutter and Ranking Member Luetkmeyer,

We are writing to you today regarding the Subcommittee on Consumer Protection and Financial Institution's hearing entitled "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions."

As a leader in providing innovative embedded finance solutions through payroll for small businesses and their teams, we welcome the opportunity to share Gusto's perspective and how we have designed our product, Gusto Wallet, as an inclusive and responsible option for small business employees to access financial products and features. We are committed to providing products that improve employee financial health and wellness, and promote equity in access to credit for underserved consumers.

Background

Gusto is a people platform that helps small businesses onboard, pay, insure and take care of their teams. We serve more than 200,000 Small and Medium Businesses (SMBs) nationwide. In addition to full-service payroll and HR and compliance support we enable benefits for employees such as healt insurance, 401(k)s, and 529 plans. In 2019, we launched Gusto Cashout, a lending product offered in partnership with Sunrise Banks, N.A., that is fully embedded in the payroll platform for the millions of employees that use Gusto across the country. We selected Sunrise Banks as our bank partner because it is a Community Development Financial Institution (CDFI) and is mission-aligned in offering responsible alternatives to payday loans. In 2020, we launched a suite of financial tools (Gusto Wallet) to allow small businesses to help support the financial health of their teams with the dual goal of promoting financial inclusion

Gusto Wallet (Cash Accounts and Cashout)

Gusto is well-positioned to provide comprehensive financial services to businesses and their employees quickly, efficiently, and responsibly due to our relationship with both the employer and the employee.

Our consumer centric approach prioritizes transparent and responsible financial products seamlessly integrated into the paycheck. We provide:

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- An affordable and fully transparent alternative to high-cost lending allowing consumers to improve their financial health and meet short-term, small dollar needs.
- Transparent terms of agreement to ensure clear and understandable borrowing frameworks.
- Products that operate in a robust state and federal regulatory environment including state licensing, Federal Prudential Regulator and Consumer Financial Protection Bureau oversight, and comprehensive Truth in Lending Act disclosures.
- Gusto Wallet helps improve consumer savings and financial health.

Employees of Gusto customers can access Gusto Wallet, which was designed to put the consumer in control of managing their earnings. Gusto Wallet includes a Cash Account with an associated debit card, and also has separate tools for the consumer to easily set money aside from regular paychecks through individual savings goals. Furthermore, customers can easily transfer money between accounts to meet their spending and emergency needs, and there are no typical fees associated with the bank accounts. **We do not charge overdraft fees, monthly maintenance, or minimum balance fees for any of the accounts.**

Gusto launched its earned wage access product, Cashout, in August of 2019 in partnership with Sunrise Banks, a CDFI, and intentionally structured it as a loan due to our commitment to transparency. Gusto Cashout is a responsible alternative to payday loans and is a transparent product in the earned wage access market. Gusto Cashout enables consumers to access funds between paydays at low or no cost. Because Cashout is embedded in our payroll system, users can easily request funds within the Gusto platform and their small business employers are able to provide financial benefits along with health benefits and other financial planning tools such as 401(k) and 529 savings accounts. Cashout is based on estimated earned wages and permits consumers to access funds that Gusto has estimated they have already earned, which makes it similar to other earned wage access products. Since Gusto Cashout is structured as a loan, unlike other earned wage access products, it comes with appropriate Truth in Lending Act and other disclosures to ensure that consumers understand the product.

Gusto Cashout Key Facts:

- Gusto Cashout is free if the employee deposits their Cashout into their Gusto Cash Account -- no interest and no fees.
- Cashout is automatically repaid on the borrower's next payday, making it simple to use.
- For those that do not use Gusto Cash Accounts, consumers are able to access Gusto Cashout for a small fee (up to $5 or a 36% APR of the loan amount, whichever is less).
- Gusto is committed to never charging more than a 36% APR for Gusto Cashout.
- Cashout is a direct to consumer loan.
- We have created significant guardrails to ensure that Cashout is responsible credit with a fast and simple repayment schedule -- such as capping the amount that a consumer can access, restricting consumers from having more than one Cashout at a time, and ensuring that consumers can only access Cashout two times per month
- Gusto educates employers about the product, and allows them to opt-out of the product offering for their employees.

Borrower Feedback on Gusto Cashout:

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Our surveys of Gusto Cashout users show the positive impact it has had, with 89% of borrowers reporting less financial stress. Another important finding is that the vast majority of customers are using Cashout as a substitute for higher-cost options such as delaying paying a bill or avoiding a bank overdraft. Employers that offer Cashout enjoy a competitive advantage, with 52% of employees saying that having access to Cashout would impact whether they accept a job.

As the Subcommittee undertakes its important exploration of overdraft fees, Gusto felt it prudent to highlight how better designed solutions can meet consumer credit needs than traditional overdraft. Gusto Cashout for example was intentionally designed to be borrower friendly, transparent, and a better substitute than other forms of high-cost credit intended to promote financial inclusion. Once again, thank you for the opportunity to submit comments, and for more information on Gusto Wallet or other products please do not hesitate to contact me at (steve.abbott@gusto.com).

Sincerely,

Steve Abbott
Public Policy Lead
Gusto

ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA®

March 31, 2022

The Value of Community Bank Overdraft Services

The Independent Community Bankers of America, representing community banks across the nation with nearly 50,000 locations, appreciates the opportunity to provide this statement for the record for today's hearing on overdraft programs.

Community Bank Overdraft Services

Community banks offer many deposit account services to address a variety of consumer needs in a highly competitive financial services marketplace. These services play a valuable role in bringing consumers into the banking system and offer them alternatives to payday loans and non-traditional loan products and the harmful consequences often associated with them.

Overdraft services are an important aspect of community banks' relationships with their customers. Examples include a variety of overdraft payment programs, in which the bank analyzes an overdrawn account for payment, and alternative services, in which customers can choose to transfer funds from a designated account or line of credit or to advance funds from a short-term, small-dollar loan to avoid an overdraft.

In addition to disclosures and notices, community banks offer safeguards to help prevent customers from overdrawing their accounts by alerting them by phone call, text message, or email in the event of low balances; large purchases; single transactions; large ATM withdrawals; unusual activity; debit card use; and other transaction activity. The goal of these services is to accommodate customers and help them avoid bounced payments as well as overdraft fees and to responsibly manage their finances. Community banks leverage their personal knowledge of their customers to determine the best way to educate them on the right program or service to suit their needs. Consumers should have the choice to retain access to overdraft services.

Overdraft and the Evolving Payments Landscape

In recent years, a variety of new e-commerce transactions have entered the market creating new overdraft risks, not only ATM and point of service (POS) debit transactions, but also online and mobile POS transactions generated by an ever-increasing number of merchants and service providers. As a result, community banks have continued to expand the features of overdraft payment programs they provide to consumers. When overdrafts occur, it is generally in the consumer's best interest for their bank to pay items/transactions rather than returning the items unpaid and triggering returned item and late or other payee fees levied by merchants, utilities, landlords, and other creditors, or even loss of service from those entities.

Pro-Consumer Characteristics of Community Bank Overdraft Services

ICBA's recent Overdraft Payment Services Study found that community banks manage overdrafts responsibly and in the best interest of their customers. Notably, all community banks inform their customers about the details of their overdraft payment programs. Ninety percent of these local institutions offer customers alternatives to overdraft services—such as customer service alerts/communications to inform of account status, account transfers from designated accounts, small dollar loans, lines of credit, and deposit advances—and structure their services to minimize the potential for overdraft fees.

Community banks are distinguished from larger institutions in their direct knowledge of their customers and the long-term relationships they enjoy. The study found that most community banks use this knowledge to make informed overdraft payment decisions or by using hybrid programs that incorporate manual review with automated programs, which helps customers and manages risks to the bank. Regulation should continue to distinguish between ad hoc overdraft payment and automated overdraft payment programs to ensure that banks can continue to meet the varied financial needs of their customers. Finally, community banks structure posting orders to help customers minimize overdrawing their accounts and incurring overdraft fees.

Community Bank Overdraft Fees Have Decreased Significantly and Are Frequently not Collected

ICBA polling also revealed community banks' determination to protect the financial position of their customers. Over 60 percent of community bank respondents did not collect a portion of overdraft fees that were assessed. Seventy-five percent of community bank respondents wrote-off or charged-off overdrafted accounts as uncollected. Over 50 percent forgave or did not assess overdraft fees as an accommodation. Two-thirds of respondents did not submit negative account balance or returned check information to any consumer agency. Half of respondents experienced a 20 percent to 50 percent reduction in overdraft income since 2020.

Do Not Adopt Laws or Regulations That Would Harm Customers or Exclude Services They Value

As you review financial institution overdraft practices, we urge Congress and the agencies not to adopt overdraft restrictions would force many community banks to stop offering overdraft services to their customers. Such restrictions would result in significantly more bounced checks and declined debit card transactions—leading to unnecessary credit rating harm, merchant late fees, or fees for returned items for these customers. Such restrictions would result in community banks impairing their customers by restricting access to existing services of convenience that meet their account needs.

Overdraft Restrictions Risk Harm to Financial Inclusion

Finally, ICBA appreciates the work of this committee in highlighting and promoting financial inclusion – an important goal that we share. Overdraft restrictions put financial inclusion at risk. They not only reduce access to services, generally, but could have a chilling impact on financial inclusion efforts, and force unbanked and underbanked consumers to predatory options. Community banks want to continue to be part of the solution to the issue of the unbanked and therefore urge caution in your consideration of onerous overdraft restrictions.

Closing

Thank you for convening today's hearing. We welcome the opportunity to highlight community bank overdraft practices and the value they provide to consumers.

Merchants Payments
COALITION

March 31, 2022

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and
Financial Institutions
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and
Financial Institutions
House Committee on Financial Services
4340 O'Neill House Office Building
Washington, DC 20024

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

The Merchants Payments Coalition welcomes today's Subcommittee on Consumer Protection and Financial Institutions hearing on "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions" and we respectfully ask that this letter be submitted into the record. MPC advocates on behalf of Main Street merchants and their customers for a more competitive U.S. payments system.

MPC applauds the committee's action, but we believe a full examination of "fees costing consumers billions" should also include the billions of dollars big banks and card companies charge to process credit and debit card transactions. The banking industry collects seven times as much in "swipe" fees as it does in overdraft fees and the impact on American families is far more widespread. Swipe fees are a hidden tax paid every day by almost all American consumers, not just those who overdraw their accounts.

At an average of just over 2 percent of the transaction amount, Americans pay the highest fees for processing credit card payments in the industrialized world. In 2020, credit and debit card swipe fees amounted to $110.3 billion, according to the Nilson Report. That compares with $15.5 billion for overdraft fees in 2019, according to the Consumer Financial Protection Bureau. Swipe fees are most merchants' highest operating cost after labor and drive up prices for their customers, amounting to more than $700 a year for the average U.S. household.

The core driver of these ever-increasing fees is that the payments system in the United States lacks fundamental competition. Visa and Mastercard, which control 80 percent of the credit card market, centrally price-fix the swipe fees banks collect every time a consumer pays with one of their cards. The banks that issue their cards refuse to compete over the fees, all charging the same even though they regularly compete with each other in other aspects of their business.

This lack of competition results in increased costs for merchants and consumers. In fact, the amount merchants pay in swipe fees has increased by 70 percent since 2010. And as Americans face the highest inflation seen in over four decades, these fees only compound the pain felt by consumers. Because the fees are a percentage of the purchase price, the amount collected goes up as prices go up, creating a multiplier effect that ultimately comes out of the pockets of consumers and results in a windfall for Visa, Mastercard and the largest banks. Beginning in April, these fees will increase even further as Visa and Mastercard fully implement a combined $1.2 billion increase in swipe fees.

We suggest that the committee should look not just at overdraft fees but also the excessive cost of swipe fees to the American consumer and the broken and uncompetitive market in which swipe fees are set. Any fee that costs everyday Americans billions while offering little in return should be the object of utmost scrutiny by those with oversight over the banking industry.

Sincerely,

Merchants Payments Coalition

cc: Members of the House Committee on Financial Services

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NAFCU
National Association of Federally-Insured Credit Unions

March 30, 2022

The Honorable Ed Perlmutter
Chairman
Financial Services Subcommittee on
Consumer Protection & Financial Institutions
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Financial Services Subcommittee on
Consumer Protection & Financial Institutions
U.S. House of Representatives
Washington, DC 20515

Re: Hearing Entitled: "The End of Overdraft Fees? Examining the Movement to Eliminate Fees Costing Consumers Billions"

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) regarding tomorrow's hearing on overdraft fees. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 million consumers with personal and small business financial service products. NAFCU and its member credit unions support fair, transparent, and competitive markets for consumer financial services and look forward to working with you to improve consumers' understanding of these products but caution that any legislative efforts that eliminate overdraft protection programs are likely to have a significant negative impact on borrowers who value these programs and are working to improve their financial well-being. It is inappropriate to intervene in market forces that are already leading many credit unions and other financial institutions to reduce, limit, or eliminate overdraft and non-sufficient funds (NSF) fees.

Credit union members who choose to use a courtesy pay or overdraft protection program do so willingly and with full disclosure of the program's costs and features. Rules for overdraft programs, originally issued by the Federal Reserve and now under the purview of the Consumer Financial Protection Bureau (CFPB or Bureau), made them something that consumers must ***opt in to***. This opt-in requirement gives consumers control and the overdraft rule's notice requirements have helped consumers to better understand the cost of overdraft programs.

In 2009, former House Financial Services Committee Chairman Barney Frank (D-MA) even recognized the importance of an opt-in regime and how consumer choice should trump legislation in this area when he said:

> *We wouldn't, I believe, be in a situation where we are talking about legislation if you would have had an opt-in regime from the beginning.*[1]

[1] U.S. Congress, House, Committee on Financial Services, *The Overdraft Protection Act of 2009*, 111th Congress, 1st session, October 30, 2009, p. 5.

While the CFPB recently released two reports on the topic, the underlying assumptions about the impact of overdraft fees was flawed and the data the Bureau relied upon was stale—overdraft and NSF programs and the market overall have changed significantly since the time period evaluated in the credit union-specific report. The Bureau recently compared these fees to resort fees, to which they bear no resemblance, and seemingly forgot these programs are subject to federal and state laws and regulations. Consumers affirmatively opt in to overdraft and courtesy pay programs and appreciate the protection they provide. If these programs were removed, this would lead to an increase in declined debit transactions and bounced checks, which would lead to negative credit reports and more consumer harm and confusion.

As Congress examines this issue, credit unions urge lawmakers to keep in mind:

- Surveys done by credit unions of their members have shown that they highly value the protection and peace of mind courtesy pay programs provide and the assurance that their transaction will go through at the point of sale.
- NAFCU surveys have found that a vast majority of credit unions report offering specialized intervention and financial education for those who frequently use courtesy pay programs, to ensure that consumers are not overly reliant on these programs and are able to improve their financial health.
- Many credit unions already do not assess fees when an account is overdrawn by a *de minimis* amount and some place caps on the total number of NSF fees that can accumulate in a given period.
- A majority of credit unions also report that they routinely waive fees when a member incurred the overdraft on accident and requests a fee waiver.

Recent trends in the market and the growth of new technologies have led to an evolving marketplace and consumer options regarding overdraft protection and courtesy pay programs. NAFCU believes that the best option for policymakers is to let the market for these programs evolve without artificial government intervention to stymie consumer choice. If policymakers are concerned about consumer information, the focus should be on increasing educational resources for consumers and improving consumer disclosures with these programs, not eliminating these programs altogether.

We thank you for the opportunity to share our thoughts in advance of tomorrow's hearing. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Associate Director of Legislative Affairs, at lplush@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Subcommittee on Consumer Protection and Financial Institutions

Statement for the Record

of

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

for hearing on

The End of Overdraft Fees?
Examining the Movement to Eliminate the Fees Costing Consumers Billions

before the

Subcommittee on Consumer Protection and Financial Institutions

of the

U.S. House of Representatives Committee on Financial Services

Thursday, March 31, 2022

Introduction and Summary

Thank you for the opportunity to submit this statement for the record and for holding this hearing on the overdraft fee practices that cost consumers billions of dollars each year.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. This statement was written by Associate Director Lauren Saunders and Staff Attorneys Carla Sanchez-Adams and Chi Chi Wu.

It is long past time to end overdraft fees as a deceptive and abusive form of high-cost credit. Financial institutions must stop exploiting low-income families and communities of color by making profits at the expense of their customers' financial health.

Recently, a number of financial institutions have made changes that reduce the likelihood of incurring overdraft fees. Among large banks, Capital One and Ally Bank have set the gold standard by completely eliminating overdraft and NSF fees, with Bank of America close behind. Others have made partial changes. But we cannot rely on voluntary actions or half measures.

Congress should pass H.R. 4277 (Maloney), the Overdraft Protection Act of 2021 and S. 2677 (Booker), the Stop Overdraft Profiteering Act of 2021.

The CFPB should adopt comprehensive rules to ensure that consumers are safe from abusive overdraft charges no matter where they bank. The bank regulators should not wait for new rules, but should take action now to stop abusive practices by the banks they oversee.

The CFPB and bank regulators should also stop new forms of overdraft fees, such as "tips" on nonbank banking apps.

An abbreviated history of overdraft fee abuses

Overdraft fees have long been one of the most pernicious and deceptive taxes on being poor. Years ago, overdraft fees were charged rarely, merely to cover the cost and risk to the bank for the occasional courtesy of covering a check that would otherwise bounce. Many banks also offered overdraft lines of credit that charged a reasonable interest rate, costing only pennies if the overdraft was quickly paid off.

But as consumers began to receive wages and other income by direct deposit and to make payments using debit cards that can be approved or declined in real time, financial institutions and their consultants saw a new opportunity to push consumers to overdraft and to make money off people who struggle paycheck to paycheck. A variety of practices sprang up that put financial institutions at odds with their customers, focused on increasing profits rather than helping improve consumers' financial health.

A perverse form of competition led to a race to the bottom. Instead of competing honestly with transparent monthly fees, financial institutions promoted "free checking" but covered their costs with back-end fees imposed on their most vulnerable customers. Many banks eliminated reasonably priced overdraft lines of credit in favor of "courtesy" overdraft programs that just meant a lot of fees.

A vicious cycle led to piling on overdraft fees that triggered more overdrafts and more overdraft fees. Banks have engaged in practices[1] including:

- Unreasonably high fees for each overdraft, typically $35, far higher than needed to cover the banks' costs;
- Multiple overdraft fees per day, even as many as six ($210) at banks that limit the number;
- "Extended" or "sustained" overdraft fees, making it more difficult for a struggling account holder to recover;
- Opaque and often manipulative practices to increase overdraft fees involving deposit clearing, debit holds, and transaction posting order. Fees may even be charged when the consumer had sufficient funds in the account when the transaction was authorized.
- Overdraft fees on debit card purchases and ATM withdrawals instead of simply declining the transaction at no charge.
- Automatically collecting the overdraft by offsetting the next deposit, even when it is Social Security, unemployment, military/veterans compensation, public benefits or wages needed to pay for necessities.

Bank regulators went along these pernicious practices. While regulators have long recognized that banks are offering credit when they choose to cover an overdraft,[2] the Federal Reserve Board carved out an exception for overdraft fees that allowed overdraft credit to be exempt from the protections of the Truth in Lending Act. The Office of the Comptroller of the Currency and the now-abolished Office of Thrift Supervision were more concerned about preempting state laws that protected consumers than stopping abusive practices at their banks.[3] The Federal

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[1] These practices are described in Peter Smith et al., Center for Responsible Lending, Banks Must Stop Gouging Consumers During the COVID-19 Crisis at 1-2 (June 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf ("CRL, Banks Must Stop Gouging Consumers").

[2] The CFPB has confirmed that overdraft loans are "credit" within the meaning of the TILA, but the Federal Reserve Board (when it had authority over TILA prior to the CFPB's creation) made a policy decision not to apply Regulation Z. *See* 81 Fed. Reg. 83,934, 84,154–84,157, 84,167–84,168 (Nov. 22, 2016); 79 Fed. Reg. 77,205–77,208 (Dec. 23, 2014).

[3] For example, they even preempted the longstanding common law rule that contracts cannot contain penalties higher than the anticipated cost of a violation. *See* Chi Chi Wu, National Consumer Law Center, Restoring the Wisdom of the Common Law: Applying the Historical Rule Against Contractual Penalty Damages to Bank Overdraft Fees (April 2013), https://www.nclc.org/images/pdf/high_cost_small_loans/common-law-overdraft-fees.pdf.

Deposit Insurance Corporation and the National Credit Union Administration occasionally expressed concern about overdraft fees but ultimately did little to nothing to address the problem.

The Federal Reserve Board did ultimately adopt an amendment to Regulation E under the Electronic Fund Transfer Act that required consumers to "opt in" before an overdraft fee could be charged on a one-time debit or ATM card transaction. But banks have found ways to manipulate consumers into opting in or have had processes that misled consumers. The Pew Charitable Trust found that 68 percent of those who overdrew and incur a fee would have preferred to have transactions declined rather than pay a $35 fee, and that people are deeply confused and are not making opt-in choices based on correct information.[4] The "opt in" rule also does not address most of the overdraft fee abuses described above or prevent millions of consumers from incurring fees that can add up to hundreds or even thousands of dollars a year.

In 2020, before the stimulus money and reduced spending triggered by the COVID crisis, JPMorgan Chase earned $1.5 billion in overdraft fees, Bank of America made $1.1 billion, and Wells Fargo collected $1.3 billion.[5] Some smaller banks, such as Woodforest National Bank, have had especially aggressive overdraft fee practices.[6] Overall, banks collected nearly $12 billion in overdraft fees in 2019, according to a report by the Center for Responsible Lending.[7]

CFPB research in 2017 found that 79% bank overdraft and non-sufficient funds (NSF) fees are borne by only 9% of accounts.[8] Frequent overdrafters tend to have low end-of-day balances, low or moderate credit scores, and low or moderate monthly deposits.

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[4] Nick Bourke & Rachel Siegel, Pew Charitable Trusts, "Customers Can Avoid Overdraft Fees, but Most Don't Know How; Bank disclosures and poor communication obscure options despite federal law" (Mar. 21, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/03/21/customers-can-avoid-overdraft-fees-but-most-dont-know-how.

[5] *See* Alexander Sammon, The American Prospect, "Big Banks Charged Billions in Overdraft Fees During the Worst Months of the Pandemic; Recent financial disclosures show overdraft to be lucrative for commercial banks, and a burden on their most vulnerable customers" (Apr. 22, 2021), https://prospect.org/economy/big-banks-charged-billions-in-overdraft-fees-during-pandemic/.

[6] Aaron Klein, Brookings, A few small banks have become overdraft giants (Mar. 1, 2021), https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants/ (listing Woodforest among six banks whose overdraft revenues accounted for more than half their net income); Polo Rocha, American Banker, "Small banks face bigger threat to overdraft fees this time around" (July 27, 2021), https://www.americanbanker.com/news/small-banks-face-bigger-threat-to-overdraft-fees-this-time-around#:~:text=Banks%20with%20assets%20of%20%2410,with%20assets%20over%20%2410%20billion (identifying Woodforest as one of 16 banks that derived 20% or more of their fee income from overdraft-related fees, compared to 4.49% average for other banks with assets of $10 billion or less and 2.78% for larger banks); Office of the Comptroller of the Currency (OCC), News Release 2010-122, "Woodforest National Bank Enter Agreement to Reimburse Consumers" (Oct. 9, 2010), https://www.occ.gov/news-issuances/news-releases/2010/nr-occ-2010-122.html (OCC concluded the bank engaged in unfair or deceptive practices by assessing excessive amounts of overdraft fees and improperly assessing recurring fees, or "continuous overdraft fees" against certain consumers).

[7] CRL, Banks Must Stop Gouging Consumers at 6.

[8] CFPB, Data Point: Frequent Overdrafters Frequent Overdrafters (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf.

Overdraft and NSF fees are one of the leading reasons that people are unbanked. After allowing, and in some cases encouraging, people to overdraft, banks have closed the accounts of those who struggled to bring their accounts out of the red. The resulting negative reports to account screening agencies such as ChexSystems and Early Warning Services then stop people from getting new accounts and exiling them from the banking system.[9] Other consumers choose to be unbanked out of fear of overdraft and NSF fees.

The tide begins to turn

The good news is that the trend towards increasing overdraft fees has begun to turn in the opposite direction.

The Consumer Financial Protection Bureau has been shining a light on overdraft fee practices and the cost and impact on the most vulnerable consumers. The CFPB has not only published important research, but has made clear that it will be addressing problematic overdraft fee practices, resulting in several banks voluntarily reforming their overdraft practices.[10]

Years of hard work by consumer advocates and others to expose the abuses of overdraft fees have begun to pay off. The Black Lives Matters movement and other racial justice efforts, along with the awareness driven by the COVID crisis that we all depend on low-paid essential workers, have led to a growing realization that it is simply unacceptable for banks to drive profit off low-income families and the communities of color who have long been deprived of income and assets.

An increasing number of financial institutions – over 200 and counting – offer safe "Bank On" accounts with no overdraft or NSF fees and other terms that meet the requirements of Cities for Financial Empowerment's National Account Standards.[11] (Disclaimer: The National Consumer Law Center works with CFE to certify accounts that meet the standards.) The American Bankers Association has been a helpful partner in this effort to promote Bank On accounts.[12] Many financial institutions meet not only the "core" Bank On standards but also the recommended ones, including limiting their use of account screening agencies and only denying new customers for past incidences of actual fraud, not overdrafts.

In the past few months, many financial institutions have announced changes to their overdraft and NSF fee practices. Among large banks, Capital One and Ally Bank have set the gold

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[9] *See* NCLC, Press Release, Report: Account Screening Consumer Reporting Agencies Impede Access for Millions (Oct. 19, 2015), https://www.nclc.org/media-center/report-account-screening-consumer-reporting-agencies-impede-access-for-millions.html.

[10] *See* CFPB, CFPB Research Shows Banks' Deep Dependence on Overdraft Fees (Dec. 1, 2021) ("The CFPB will be enhancing its supervisory and enforcement scrutiny of banks that are heavily dependent on overdraft fees."), https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/.

[11] *See* https://joinbankon.org/accounts/.

[12] *See* https://www.aba.com/banking-topics/consumer-banking/inclusive-banking/bank-on.

standard, completely eliminating overdraft and NSF fees. Bank of America has come close, eliminating NSF fees, ending overdraft fees on ATM and debit card transactions, reducing its overdraft fee to $10, limiting the number of overdraft fees, and making other moves that reduced its overdraft revenues by 97% from where they were in 2009.[13]

These moves show that it is possible for banks – including some with significant branch networks – to make the choice to eliminate overdraft and NSF fees that harm the most vulnerable consumers and push them out of the banking system.

Other banks, including Synovus, Citizens, Santander, Huntington, and PNC, have taken partial steps to reduce the number of overdraft fees that their customers incur. These steps include 24 hour grace periods, free overdraft cushions, reducing the size or number of overdraft fees, and eliminating "extended" or "sustained" overdraft fees.[14]

Any measure that reduces overdraft fees is a step in the right direction. But in among themselves, smaller steps are ultimately insufficient and more needs to be done. And too many financial institutions still rake in profits off of the backs of families who pay overdraft and NSF fees.

Will "tips" become the new fintech overdraft fee?

In recent years, fintech banks and nonbank fintechs offering banking services have begun to offer redesigned deposit accounts without overdraft or NSF fees and with features to help people manage their finances. But it is important to keep an eye on emerging fintech overdraft practices that may appear to be friendlier but could become the new, evasive form of overdraft fee. And nonbank banking and payment apps also pose other issues, including in some cases gaps in or lack of deposit insurance, and an emerging business model that may make money by pushing cryptocurrencies or other risky investments that are dangerous for low and moderate income families.

Fintech apps are increasingly collecting "tips" as a form of payment. The "tips" model can be found on fake earned wage access products, cash advance loans and overdraft features on nonbank banking apps, and "peer-to-peer" loan platforms.[15] The use of purportedly voluntary

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[13] *See* Bank of America, Press Release, "Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees" (Jan. 11, 2022), https://newsroom.bankofamerica.com/content/newsroom/press-releases/2022/01/bank-of-america-announces-sweeping-changes-to-overdraft-services.html.

[14] See CFPB, Rebecca Borné & Amy Zirkle, "Comparing overdraft fees and policies across banks" (Feb. 10, 2022), https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/; CFPB, Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported, https://files.consumerfinance.gov/f/documents/cfpb_overdraft-chart_2022-02.pdf.

[15] *See* Testimony of Lauren Saunders, National Consumer Law Center, Before the U.S. House Committee on Financial Services Task Force on Financial Technology On "Buy Now, Pay More Later Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products" at 14-17(Nov. 1, 2021), https://bit.ly/LS-BNPLtestimony ("Saunders Fintech Cash Flow Testimony").

"tips" to disguise overdraft fees and other charges is inherently deceptive, and "tips" should be treated like any other payment.[16]

One application of the "tips" model is found on "nonbank banking" apps – banking services offered by so-called "challenger banks" or "neo banks" that are not actually banks[17] but partner with a bank to offer deposit accounts through an app and associated debit card. These banking apps are essentially a form of prepaid account, but they style themselves as a bank account and do not comply with the CFPB's prepaid accounts rules under Regulation E.[18]

The "tips" model is spreading. For example, the following nonbank banking apps offer overdraft or credit features that collect tips:

- Chime offers "overdraft fee-free up to $200," comparing the "$0" Chime SpotMe fees to a $34 traditional overdraft fee.[19] But Chime requests tips after it covers an overdraft.[20]
- Albert states: "We don't believe in overdraft fees. Instead, we'll spot you up to $250 so you can make ends meet. If you're enjoying Instant, add an optional tip. There are no late fees, interest, or credit check."[21]
- Dave's home page advertises "no overdraft fees" and features an image of a text message: "Your phone bill may cause overdraft! I can spot you up to $250 with 0% interest to prevent it."[22] But Dave collects "tips" and "donations," and also charges an "Optional Express Fee" of $1.99 to $5.99, depending on the amount advanced.[23]
- MoneyLion offers "cash advances up to $250 with no interest." MoneyLion collects "tips" plus "delivery fees" of $3.99 to $4.99 for instant delivery.[24]

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[16] California recently clarified that voluntary payments such as tips are still "charges" subject to the cost protections of California law. *See* Calif. Department of Financial Protection and Innovation, Interpretive Letter-Flexwage, OP 8206 at 6 n.4 (Feb. 11, 2022), https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/02/FINAL-OP-8206-FlexWage-Specific-Ruling.pdf.

[17] Chime, for example, was forced to stop calling itself a bank in response to state enforcement actions. *See* Anna Hrushka, BankingDive, California regulator orders Chime to stop calling itself a bank (May 6, 2021), https://www.bankingdive.com/news/california-regulator-orders-chime-to-stop-calling-itself-a-bank/599710/; State of Illinois, Dep't of Fin'l and Prof'l Reg., Settlement agreement and Consent Order, In re Chime Financial, Inc., No. 2021-DB-01 (March 25, 2021), https://www.idfpr.com/banks/cbt/Enforcement/2021/2021%2003%2025%20Chime%20-%20IL%20Settlement%20Agreement%20and%20Consent%20Order.pdf

[18] *See* 12 C.F.R. § 1005.2(b)(3)(i)(D)(1) (exempting checking accounts from the prepaid accounts rule); NCLC, Consumer Banking & Payments Law § 7.2.3.2.5 (6th ed. 2018), updated at library.nclc.org (explaining that accounts without checks should be viewed as prepaid accounts, especially if they have overdraft fees).

[19] https://www.chime.com/ (last accessed Mar. 30, 2022).

[20] https://www.chime.com/spotme/ (last accessed Apr. 4, 2022).

[21] https://albert.com/instant/ (last accessed Mar. 28, 2022).

[22] https://dave.com/ (last accessed Mar. 28, 2022)

[23] https://dave.com/terms (last accessed Mar. 30, 2022).

[24] https://www.moneylion.com/instacash/ (last accessed Mar. 30, 2022).

- Earnin offers payday advances in two different forms: as “Cash Out,” to “turn every day into payday,”[25] and as a “Balance Shield” feature: “Stay covered with Balance Shield Cash Outs. Get automatic access to $100 of your earnings to keep your balance out of the red.*”[26] Both collect fees in the form of purportedly voluntary tips. The Earnin is currently a freestanding cash advance app, but the company is piloting a banking app that will include those features in connection with a deposit account.[27]

These nonbank banking apps are typically aimed at struggling consumers who are living paycheck to paycheck and are attracted by the ability to overdraft. Users are likely to be disproportionately people of color in communities that have long been deprived of income and assets. Thus, “tips” will come out of the pockets of those least able to afford them. Like traditional overdrafts and payday advances, these fintech overdraft and cash advances are repaid in a balloon-payment immediately from the next deposit. These advances undoubtedly lead to the same cycle of debt and repeat overdrafting or reborrowing that traditional overdraft services do.

The request for and cost of “tips” is typically downplayed in, or sometimes entirely absent from, promotions for these apps, which imply that their overdraft and credit features are free. Although the cash advance features on Albert, Money Lion and Dave are not automatically activated by overdrafts the same way that Chime’s is, they serve an equivalent function by advancing funds to consumers to avoid an overdraft. The apps may even identify impeding overdrafts and prod the consumer to take an advance. But like overdraft credit, they do not provide loan disclosures or comply with lending laws.[28]

The “tips” model is evasive and deceptive. Though purportedly voluntary, companies have continuously evolving ways of pressuring people into “tipping” or making it difficult not to tip. The tips are unlikely to be truly voluntary, and even if they are, the label does not change the cost to or the impact on consumers. The tipping model takes advantage of consumers’ lack of awareness of how the tips add up.

[25] https://www.earnin.com/products/cash-out (last accessed Mar. 30, 2022).
[26] https://earnin.com/products/balance-shield (last accessed Mar. 30, 2022). Earnin does not, however, have any connection to payroll or actual earnings.
[27] https://earnin.com/products/earnin-express (last accessed Mar. 30, 2022).
[28] They likely view themselves as exempt from the Truth in Lending Act because they do not require repayment in more than four installments and claim that the “tip” is not a finance charge. *See* Regulation Z, 12 C.F.R. § 1026.2(a)(17)(i).

Companies can employ strategies to make it difficult not to tip or to make the consumer feel compelled to tip.[29] Default tip amounts are often set in advance and may be difficult to undo.[30] Apps may also use different user interfaces to send psychological signals and encourage quick action without thought about the default tip. Disingenuous statements encourage borrowers to "pay it forward" and to support a "community,"[31] ignoring the large companies and wealthy hedge fund investors who profit from the "tips."

Even without direct messages or policies to disadvantage low tippers, consumers may believe they must make ample tips or will be penalized in some manner – a threat to people who live paycheck to paycheck. Companies also exploit the psychological phenomenon of "reciprocity," *i.e.*, that most people will feel compelled to give a tip and recognize actions designed to activate "obligatory giving."[32]

Some consumers may manage to use tip-based services for free. But for-profit enterprises count on tips as a profit center. Furthermore, with investors who need a significant return on investment, the apps are unlikely to put up with a lot of non-paying users.

Regulators cannot be expected to constantly monitor the subtle and ever-changing ways that companies will push people into tipping. When caught using practices to coerce tips, companies may change their policies and then devise new ways to ensure that they get paid.

Using the "tips" label does not make an overdraft fee any less dangerous or any less likely to lead to a cycle of debt and reborrowing. As we make progress on traditional overdraft fees, regulators must put a stop to the tips model before it spreads further to become the new overdraft fee.

Recommendations

We need action to stop overdraft fees abuses, old and new.

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[29] For example, in 2019 Earnin "encouraged users to leave a tip of anywhere between zero and $14 on a $100 weekly loan," and users who didn't leave a tip "appear to have their credit restricted." Kevin Dugan, New York Post, Cash-advance app Earnin gets subpoenaed by NY regulator: source (Mar. 28, 2019). Additionally, the SoLo app – which requires consumers to designate the "tip" in advance of funding -- "notes that loans are much more likely to be funded when users tip the maximum amount." Fast Company, These 2 Black founders aim to offer a fairer alternative to payday loans (Feb. 18, 2021).

[30] An Earnin user reported being completely unable to undo the default tip, even after deleting the app and reinstalling it. Conversation with Brent Adams, Woodstock Institute. An article about SoLo noted that "the only way to avoid [a tip] is through a toggle in SoLo's settings menu, which must be reactivated for each request. There's no way to opt out of donations while making the request itself." Fast Company, These 2 Black founders aim to offer a fairer alternative to payday loans (Feb. 18, 2021).

[31] https://www.chime.com/spotme/.

[32] *See* Linda and Charlie Bloom, Psychology Today, "Honoring the Rule of Reciprocation" (Oct. 10, 2015), https://www.psychologytoday.com/us/blog/stronger-the-broken-places/201510/honoring-the-rule-reciprocation.

Overdraft fees should either be eliminated altogether or strictly regulated. To address longstanding overdraft fee abuses, Congress should pass H.R. 4277 (Maloney), Overdraft Protection Act of 2021 and S. 2677 (Booker), Stop Overdraft Profiteering Act of 2021.

The CFPB also must enact clear rules that apply to all financial institutions. In the meantime, the banking agencies need to address unfair, deceptive and abusive overdraft fee practices that harm the financial health of consumers.

Critical elements of overdraft fee reform include:

- Cap the number of overdraft fees at one per month and six per year. Additional overdrafts can be covered through affordable overdraft lines of credit or transfers from linked accounts.
- Prohibit overdraft and NSF fees on debit and ATM card transactions, as well as on real-time payment systems like Zelle.
- Limit any overdraft and NSF fees to amounts that are reasonable and proportional to financial institutions' costs in the overdraft coverage.
- Prohibit overdraft or NSF fees on transactions that were authorized when the balance was positive.
- Prohibit reordering transactions in a manner that increases overdraft or NSF fees.
- Require consumers to opt in to any overdraft coverage and give them clear up-front information about their options for covering overdrafts.

Financial institutions should not wait to be told what to do. They should eliminate overdraft and NSF fees altogether or get as close as possible to that goal. They should also offer and promote Bank On accounts. But offering a Bank On account is not a substitute for reforming overdraft practices on all accounts.

To prevent new fintech forms of overdraft fees, the CFPB and bank regulators should:

- Subject nonbank banking apps to the CFPB's prepaid account rules, as they are not checking accounts and thus are not exempt from those rules. The prepaid account rules are designed for the vulnerable unbanked and underbanked consumers who have had trouble with overdraft fees on traditional accounts and who are typically the audience to whom fintech accounts are targeted.

- View "tips" as fees regardless of the label put on them and regardless of whether they are purportedly voluntary. "Tips" on cash advances should be treated as finance charges under the Truth in Lending Act. "Tips" paid for overdraft advances should be subject to the overdraft fee rules discussed above.

Conclusion

We have a moment right now with a growing consensus that financial institutions must stop exploiting their most vulnerable customers, communities of color, and the essential workers on whom we all depend. It is time to end the scourge of overdraft fees. For more information or with questions, please contact Lauren Saunders at lsaunders@nclc.org.

COMMENTS FOR THE RECORD FROM COREY STONE TO

HOUSE OF REPRESENTATIVES FINANCIAL SERVICES COMMITTEE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

HEARING ON "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions" Held on March 31, 2022

My name is Corey Stone, and I am submitting comments following the above-mentioned hearing on overdraft fees. The opinions I'm expressing are solely my own and do not reflect the views of organizations with which I am currently affiliated.[1]

From February of 2011 through June of 2016, I served as the Consumer Financial Protection Bureau's Assistant Director for Deposits, Reporting, and Liquidity Lending Markets. The office I oversaw provided market intelligence to the Bureau's various Divisions regarding deposit accounts, including bank overdraft programs. In my role I initiated the Bureau's data collection, analysis, and research publications related to overdraft. Immediately prior to my joining the CFPB I served as a member of the Federal Reserve Board of Governors' Consumer Advisory Council.

Prior to serving at the CFPB, I had made a career in the consumer payments industry. I worked for 14 years as a consultant in a firm serving large credit card and debit card issuers and the global card networks. I subsequently served for 6 years as Executive Vice President and in other capacities at American Payment Systems, a bill payment processor serving utilities and telecommunications companies (now the CheckFreePay division of Fiserv). That company enabled consumers (who were largely low-income) to pay their utility and phone bills in person using checks or cash at over 11,000 retail locations nationally, including Walmart. Consumers used our service because they could save postage, but also because our system gave them same-day or next-day credit with the utility, so we enabled them to pay at the last minute. Our highest volume days were on Fridays, when most people received their paychecks or payroll deposits, and on Spring days when a particular gas or electric utility's winter heating moratorium on shut-offs expired and consumers had to pay their arrearages or lose their gas or electricity service.

This experience opened my eyes to the hand-to-mouth existence experienced many Americans. At American Payment Systems we saw many consumers use checks to pay their bills only to see them returned for nonsufficient funds in their accounts. Our company earned revenue each time we "re-presented" these payments to try to collect when our clients' customers had deposited their next paychecks. As the executive largely responsible for promoting and pricing this service to billers, it took me longer than it should have to recognize the costs this imposed on the consumers we ultimately served: many of them incurred multiple NSF fees at their banks (if the checks were returned for a second or even a third time) on a single payment attempt. And a much larger number of our clients' customers incurred overdraft fees on their payments.

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[1] I am currently a Senior Advisor to the consulting firm Oliver Wyman and a Senior Advisor to the Financial Health Network. I am also the Board Vice Chair of Connex, a $850 million asset credit union in Connecticut.

Among my many reasons for joining the CFPB, one of the most important was to make up for having been part of a payment system so dependent on such punitive fees and to help consumers avoid them.

What the History of Automated Overdraft Tells Us

My experience in the payments industry provides an historical perspective. Overdraft as we know it today did not arise from market demand from consumers seeking short-term liquidity or from innovators designing a product to meet that need. Rather it evolved haphazardly as a byproduct and artifact of the electronification of check payments and the widespread adoption of debit cards.

Back in the early 1980s the most common penalty fee banks charged customers was for bouncing checks they had written when their accounts didn't have funds to cover them. Overdrafts were a "courtesy" extended manually and at a branch manager's discretion to make sure a customer's bills got paid even when there were "nonsufficient funds." The bank charged the same NSF or "returned item" fee whether it chose to cover the payment or not.

As banks automated their payment processing, they put automatic decision rules in place to determine when and by how much a given customer could overdraw his or her account. Yes, being able to overdraft helped some bank customers avoid shut-offs, late-charges on their rent and utilities, and embarrassment. But the idea that overdraft was primarily a "protection" service (as opposed to a customer failing and a violation of their checking account agreement) had not yet germinated.

It was the widespread promotion and adoption of debit cards by the major card networks and consumer banks in the early 1990s that supercharged overdraft. Checking account debit card transactions grew by orders of magnitude during the 1990s, roughly doubled again during the 2000's, and continued to grow during the 20teens. This primarily affected low-and-moderate income consumers, who used debit cards rather than credit cards for day-to-day expenses either because they didn't have credit cards, or because they were revolving their credit card balances) and didn't want new transactions to add to their interest expense. (Credit card "transactors" like me, who can pay their balances off each month interest-free, are happy to put as much of our daily expenditures on our credit cards as we can in order to get cash-back or mileage rewards).

As debit card transactions replaced cash purchases, the number of debit transactions drawn on a typical LMI family's account each month doubled and then tripled. For families living pay-check-to-paycheck and who frequently took their bank balances close to zero, the more debit transactions, the more opportunities to overdraft. The number of overdrafts skyrocketed.

It was in the early 1990s that banks began to view overdraft as a distinct revenue center. Prior to that time, most banks' deposit fee revenue came from monthly maintenance fees on checking accounts. If you count the cost of branch infrastructure, ATMs, staff, call centers, statement printing and mailing, and the relevant back-office technology, checking accounts cost over $200 dollars per year to provide. Up-front monthly maintenance fees were a fair, transparent, and equitable way to recoup some of these costs from a broad base of users.

But a few large institutions, notably Washington Mutual Savings Bank (WAMU) and Twin Cities Financial (TCF), introduced "free" checking with no minimum balance. These banks saw that they could attract a wide range of depositors, while also charging fees to the few accountholders who overdrafted frequently. The replacement of transparent up-front maintenance fees (by which consumers could compare one bank to another) with back-end fees (which most consumers didn't expect to incur) unleashed a competitive "race to the bottom" that no institution could avoid. The result was that "free" checking rapidly became the norm[2] while the most of the tolls to pay for our shared banking infrastructure fell on the most financially vulnerable.

It was this race to the bottom and the accompanying explosion of overdraft fees that led the Federal Reserve Board of Governors to study overdraft fees in the mid-2000's. It ultimately released its opt-in rule in 2009 (over objection from the banking industry),[3] amending Regulation E by requiring banks and credit unions to obtain a customer's permission before they could charge fees for overdraft on non-recurring debit card transactions and ATM withdrawals.

It was, perhaps paradoxically, the Fed's intervention and the disclosures and permissions it required that finally turned overdraft from a penalty into a service.

How Debit Cards Made Money Management Harder

At the same time, debit card usage greatly complicated consumer record-keeping. True, one no longer needed to visit an ATM to tap funds in one's bank account. But swiping a debit card once or twice a day instead of visiting an ATM once a week made it considerably more difficult to keep a checkbook and few debit card users do. No automated tool has yet replaced the checkbook as a way to track checks and electronic bill payments one has initiated. Settlement times on all these transactions aren't predictable; and without a checkbook, consumers have increasingly relied on the "available balance" amounts conveyed by their mobile banking apps. These figures don't track checks a consumer has written but that haven't yet cleared. And they don't help forecast or adjust for recurring ACH or debit card "auto-debits" that a consumer has pre-authorized.[4]

Thus, while consumers who are most at risk of overdrafting constantly check their balances on-screen when funds are low, the numbers they see have become less and less reliable as indicators of what they truly have available to spend. Without ways to track checks they've written or forecast when pre-authorized debits will hit their accounts, consumers have had to rely more and more on their memories and mental math when deciding whether they have sufficient funds to make a debit card purchase.

In short, the explosion of debit card usage and the electronification of payments increased chances for overdrafting while making it more difficult for low-wealth families to avoid. At the

[2] Many banks restricted their free checking to consumers who could maintain minimum deposits, charging monthly maintenance fees to those whose cash cushions fell below those thresholds. So many overdrafters continued to pay maintenance fees too.
[3] Most banks argued for an opt-out. In choosing to mandate and opt-in choice for debit card overdraft, the Fed cited consumer its research that indicated most consumers expected their debit card transactions to be declined if their account had insufficient funds to cover a transaction seeking authorization.
[4] It is worth noting that overdraft fees on recurring debit card transactions in which a consumer has authorized her card to be debited regularly to pay a recurring bill are exempt from the opt-in requirement. Billers such as wireless carriers, health clubs, streaming services, and broadband carriers widely encouraged such pre-authorized payments during the 2010s," both using debit cards and electronic checks (ACH). These "auto-debits" have been responsible for a good deal of overdraft volume growth during the last decade.

same time, banks' and credit unions' progressively greater and greater reliance on overdraft revenue aligned banks' incentives with their customers' financial mistakes rather than theiur success.

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Now I would like to comment on a few specific topics that I believe were incompletely covered i the witnesses' testimony and in their responses to questions posed by members of the Subcommittee. I will do this in the form of a Q & A and refer to the above history in the process.

Did the Fed's amendment of Regulation E requiring a consumer's permission before charging fees on non-recurring debit card transactions and ATM withdrawals make overdraft transparent?

The opt-in requirement added transparency, but only to a limited extent and only on some transactions. When the requirement was first implemented in 2010, a majority of consumers at the largest banks opted out, with the result that overdraft fees declined between 3 and 20 percent (depending on the bank) in the year following implementation.[5] But the opt-in regime did not apply to all debit card transactions, opt-in decisions haven't always been presented to consumers in straightforward ways, and the difficulty of forecasting payment settlement and how much money one really has available clouded many consumers' ability to know when a given transaction would result in an overdraft.

First, and to be clear, a consumer's not opting into debit card overdraft doesn't mean their non-recurring debit card transaction won't overdraw their account. It just means the consumer can't be charged a fee when it does. In our study of frequent overdrafters, my colleagues at the CFPB found that the most frequent overdrafters who were opted-out of debit card overdraft nevertheless overdrew their accounts with their debit cards almost as much as frequent overdrafters who were opted in.[6] How can that be? The answer: it appears that most overdrafts on debit card transactions occur when a consumer had sufficient available balance at the time the consumer swiped their card (and the bank authorized the transaction). But then intervening debits, such as outstanding checks, ACH paymenra, or recurring debit card transactions, settled to the account before the debit card transaction did. As a result, there wasn't enough money left in the account when the debit card transaction settled to cover it.

These "authorize positive/settle negative" transactions demonstrate how "close to the edge" many customers are cutting it, the difficulty many have in knowing when they will or won't overdraft, and how easy it is to forget outstanding payments or miscalculate how much of the account balances that appear "available" has already been committed to other payments. When funds appear sufficient to at swipe time, a bank will generally authorize the transaction; but when there are insufficient funds at settlement, the bank is obligated to pay the transaction whether the consumer is opted-in or opted-out. The only difference is that the bank can charge a fee for the overdraft to the former but not the latter. In this regard, and in acknowledgement of consumers' difficulty in avoiding such overdrafts, it is notable and laudable that JPMC recently eliminated fees on such "authorize positive/settle negative" transactions.

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[5] "CFPB Study of Overdraft Programs: A white paper of initial data findings;" 2013 at 40. Available at https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf
[6] "CFPB Data Point: Frequent Overdrafters;" 2017 at 29 and footnote 39. Available at https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf

As mentioned above, the opt-in regime does not apply to recurring debit card transactions that many consumers pre-authorize with their streaming networks, magazine subscriptions, and other recurring bills. These debit "pull" transactions can be declined by the bank or, if paid, they become subject to overdraft fees whether the consumer is opted-in or -out. Most opted-out consumers don't make this distinction when they pre-authorize such debit card transactions. And in the absence of forecasting tools to alert them as to when the transaction will hit the account, consumers have a greater likelihood of forgetting to fund their account before settlement.

Finally, there is considerable evidence that many consumers who are opted-in don't realize it or, if they are, don't know that they have the ability opt-out at any time, as Regulation E allows. If one is a consumer at risk of overdrafting, the choice of whether to opt in or out is the biggest single driver of how much you'll pay in fees each year. In the CFPB's study of frequent overdrafters (those who overdrew their accounts or had a check bounce more than 10 times per year), the median consumer who was opted-in incurred $455 in fees annually while the median consumer who was opted out incurred only $175.[7]

In my office's 2013 white paper on overdraft, we found a nearly 8-to-1 variation between the very largest US banks[8] in the rates at which their new account-holders opted in to debit card overdraft. Similarly, while we found that the average opt-in rate among all existing depositors at the largest banks was 22%,[9] I have personally encountered institutions with opt-in rates well above 50% and one who claimed it was 90%. These wide variations suggest that consumers have been hearing widely different things from bank to bank about what it means to be opted-in or -out of debit card overdraft.

At the time that the Fed's Reg E amendment was implemented, many banks marketed opt-in aggressively, urging their existing consumers to keep open the option of accessing funds for emergencies using debit cards and ATMS. Other banks did not; so that accounts for some of the variation. But the biggest source of variation in opt-in rates has come from the different ways banks have presented the opt-in choice when customers enroll for new checking accounts. In the in-person context of new account sign-ups, the opt-in disclosure form is easy to bury in a stack of papers in which new accountholders are required to prove their identities, select which account product they want to sign up for, what check color to get, etc. Especially when branch personnel are incented to do so, they are apt to place opt-in in a favorable light. Or they may be tempted to conceal the facts, confuse, or deceive.

Indeed, the Pew Charitable Trusts surveyed recent overdrafters and found that 70% were not aware that they could opt-out of debit card overdraft, while 54% thought that if they did, they would be charged a fee when a debit card transaction was declined.[10] Likewise, among the large banks the CFPB examines directly, it has found instances of bank personnel encouraging

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[7] Frequent Overdrafters 2017 *supra* at 31 and footnote 43 for median numbers of annual overdraft fees incurred by frequent overdrafters who are opted-in and opted-out. My dollar calculations assume an average fee of $35.

[8] CFPB White Paper *supra* at 31. "The opt-in rate for new accounts at the bank with the highest opt-in rate for these accounts was nearly 8 times the opt-in rate at the bank with the lowest rate."

[9] *Id.* at 31.
[10] Pew Charitable Trusts: "Overdraft Does Not Meet the Needs of Most Consumers;" 2017. Available at https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/overdraft-does-not-meet-the-needs-of-most-consumers

consumers to opt-in to debit card overdraft by misleading them into believing their check and ACH transactions would not be eligible for overdraft coverage if they did not.[11]

Do frequent overdrafters have lower incomes?

The witnesses appeared to make conflicting claims about the income levels of the most frequent overdrafters. Most argued that those who overdraft are predominantly consumers with low and moderate incomes, while one claimed that those who overdrafted the most had higher incomes than those who overdrafted less or not at all. But a close look at the available data clearly shows that as a group, overdrafters have lower incomes than non-overdrafters.

At a first look, the CFPB's 2017 report on frequent overdrafters could appear to support either conclusion. The median monthly deposits into accounts that overdrafted more than 10 and less than 21 times per year was $2,050, slightly less than the median monthly deposits into non-overdrafting accounts ($2093), but considerably less than the median deposits into accounts held by accounts that overdrafted 21 or more times per year ($2554).[12] On the other hand, these monthly deposit levels would appear to put *all* of these accounts at well below the median household income in 2012 (when most of the data was captured).

But the data used in the CFPB's study is at the account level and it is anonymized. The researchers couldn't link the accounts to the individuals or households who own them. And not all checking accounts are used as the primary transaction accounts into which households put their earnings and out of which they pay most of their monthly expenses. Such non-primary accounts see fewer deposits than primary accounts; likewise, they rarely overdraft because they rarely transact. Including such non-primary checking accounts among the non-overdrafting accounts would weigh down the median deposits—and implied household incomes--of the non-overdrafting accounts observed in the study, particularly if (as is likely) higher-earning households are more likely to hold more than one checking account.

The Bureau's research team tested this by excluding low-activity accounts (those in the bottom quartile of debit transactions) and reported the outcome for the remaining accounts in an appendix to its study of frequent overdrafters. It found that median monthly deposits into accounts of moderately frequent overdrafters ($2,276) and very frequent overdrafters ($2,659) were well below those of non-overdrafting accounts ($3,145).[13]

Given the limits to how one can infer household characteristics like income from account-level statistics, surveys of consumers who have recently overdrawn their accounts is a much more direct and accurate way to assess their household income. For example, in its widely cited 2016 survey of frequent overdrafters, the Pew Charitable Trusts found that 7 out of 10 reported annual household incomes below $50,000,[14] all below the median US household income in that year.

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[11] For example, see "Supervisory Highlights, Issue 16 - Summer 2017" at 16 – 17. Available at https://files.consumerfinance.gov/f/documents/201709_cfpb_Supervisory-Highlights_Issue-16.pdf
[12] Frequent Overdrafters *supra* at 16.
[13] *Id.* at 36
[14] Pew Charitable Trusts: "Heavy Overdrafters," 2016 at 4. Available at: https://www.pewtrusts.org/-/media/assets/2016/04/heavyoverdrafters.pdf

Is overdraft a competitive service?

During most of its evolution from returned item fees and discretionary courtesy coverage, overdraft was not a competitive offering. It wasn't until the Fed amended Regulation E in 2009 that banks began to speak full-throatedly overdraft as a "service."

Competitive services generally have certain characteristics. One of these is a close correlation between price and cost and/or risk. This marker of competition has generally been absent from the overdraft market in the US.

Overdraft fee amounts, which average around $35, bear almost no relation to the amounts by which accounts are taken negative (the most direct measure of risk exposure on a transaction) and which can vary between $1 and $500 or more. Nor do the fee amounts reflect actual losses from account defaults, the biggest cost associated with overdraft programs. The Bureau found that charge-offs on accounts that failed to cure their negative balances and were closed for cause represented only 14 percent of overdraft fee revenue.[15]

NSF fees have behaved in a similarly non-competitive way. Even after the electronification of checks twenty years ago virtually eliminated all the costs once associated with returning physical checks, fee amounts increased rather than decreased.

Another indicator of competition in the market would be the existence of a variety of product offerings with respect to overdraft. But up to a few years ago, checking accounts only came with overdraft on check and ACH transactions, with choice over whether to be able to over-spend available funds—or have payments declined—being limited to debit card and ATM transactions. Only thanks to the work of local BankOn movements and Cities for Financial Empowerment, have meaningful numbers of banks[16] provided consumers with the option of using accounts that do not permit a consumer to overdraft on check or ACH transactions and do not impose NSF fees. Such accounts (which often carry with modest monthly maintenance fees) now give consumers a way to vote with their feet on overdraft—and millions are choosing to do so.

I also believe that start-ups, including some of the digital-only "neo-banks" or "challenger banks" have introduced a new level of competition by not charging for overdraft, while "fintechs" such as Brigit, Dave, and "early wage access" firms have created ways to avoid it. Brigit, on whose board of advisors I serve, injects up to $250 into users' checking accounts automatically when balances get low and for a fixed monthly fee of $10 (and whether the consumer uses the funds in a particular month or not).

But this level of competition has been slow to arrive.

Is overdraft a substitute for payday loans and similar forms of short term, small dollar credit?

There is little evidence that recent overdraft reforms (like those introduced by University of Wisconsin Credit Union, Bank of America, and PNC, to name a few) will deprive consumers of

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[15] CFPB White Paper *supra* at 17.

[16] To date over 200 banks now offer accounts that meet BankOn standards. See: https://joinbankon.org/accounts/

checking accounts that give them the ability to overdraft when funds are short or when they make timing mistakes.[17]

But the assertion that elimination of overdraft, or the reduction of overdraft limits, will drive consumers to payday loans bears testing in the marketplace. Having studied and interacted with payday lenders extensively, I know that they have historically pitched their products to consumers as a means of avoiding overdraft fees. Given what is actually happening in the market, it seems as likely that with a reduction in the sting—but not the availability—of overdraft on most transactions, overdrafting may indeed go up, while the number of consumers who resort to payday borrowing will go down. One could certainly have no objection to the latter development.

One recent natural experiment further suggests that cross-elasticity between overdraft and payday loans (and unintended substitution effects likely to result from regulatory interventions) has been overblown.

Back in 2015, guidance from the FDIC and OCC caused most banks that offered a payday-like product called deposit advance to discontinue it. If one assumed that overdrafts were a substitute for these short-term loans, one would have expected users' overdrafts to increase after the loans were discontinued, since both are sources of short-term liquidity. But this isn't what happened.

It turns out that before the product's discontinuation, deposit advance users were frequent users of overdraft at the same bank. Moreover, once deposit advance was discontinued, former users' overdrafts did not increase. The evidence suggests that prior to their discontinuation, these expensive loans may have increased users' likelihood of incurring overdrafts as much as they helped reduce it.[18]

Why have large banks been prepared to reduce their overdraft and NSF fees and why now?

I agree with some of the witnesses that the free overdraft services offered by the challenger banks and the cheaper short-term loans offered by some of the fintechs have generated new competition in the marketplace. In particular, the largest banks that have national brands and that have been investing to improve their online account acquisition of digital-only customers now view the challenger banks as being among their primary competitors (along with potential non-financial future competitors like Walmart, Google, and Amazon).

Another factor has been the pandemic. First it highlighted the financial vulnerability of the low-paid service workers who bore the brunt of layoffs or who had to perform essential work but couldn't adequately care for children home from school without taking on additional expenses. A number of banks recognized how inequitable it was that those families bearing the brunt of the pandemic were also likely to incur overdraft fees as a result of their hardship. Second, bankers witnessed how overdrafting went down during the pandemic among households that were eligible for stimulus payments and who benefitted from extended unemployment insurance

[17] As discussed above, no financial institution can prevent overdrafts occurring on debit card transactions that authorize positive but settle negative.
[18] CFPB: "Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products," 2016 at 35 -61. Available at: https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf

and student loan forbearance. With just a bit more money in their packets and constraints on how they could spend it, LMI consumers' bank balances went up. Given how these small changes in liquidity made a big difference in overdrafting, several banks began to rethink what packages of services they might be able to offer their depositors to improve their financial resilience. This included modifications to overdraft programs to make them less harsh and to give consumers more ability to predict and control when they would overdraft.

And then there is a third factor.

A long-time banking attorney I know tells a story about a meeting he and other banks' chief regulatory counsels had with their principal federal regulator back in the 1990s. All of the banks were concerned that overdraft was getting out of control, that by being forced to offer free checking accounts they would have to increasingly rely on overdraft revenue. The message they gave to their regulator was simple: "Make us stop. Unless you intervene, we won't be able to stop ourselves from raising fees and penalizing our most vulnerable customers." The regulator, one of four that competed for banks' charter choice at the time, did nothing because acting unilaterally would simply have disadvantaged the banks it oversaw in the competitive race to the bottom that was unfolding at the time.

This story highlights a something I encountered while working at the CFPB among many (though by no means all) senior bank executives who had an opportunity to speak with me privately about their overdraft programs: *shame*. They said they wished their institutions weren't as dependent on overdraft revenue as they had become. At the same time, they were afraid to express this publicly to their shareholders or to their competitors.

Coming from their industry, I have shared this embarrassment. I'm hopeful that the combination of vigorous enforcement of the law by the CFPB and prudential regulators, competition, an accelerated move to faster payments, and financial leaders' backbone to stand up and do what's right will cause more banks and credit unions to make aggressive reforms to their overdraft programs.

Thank you for allowing me to submit these comments on the hearing.

VIRGINIA CREDIT UNION SERVICES
ONE VISION. ONE VOICE.

April 1, 2022

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and
Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and
Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of the Virginia Credit Union League which represents Virginia's 109 member-owned not-for-profit credit unions and their 15 million members, I am writing regarding the hearing entitled, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions." After watching the hearing, the League wishes to emphasize certain points.

Overdraft protection services were created to allow consumers the ability to access funds where the cost of a transaction exceeds their current account balance. As required by law, users of overdraft protection must actively opt-in to the service. In most cases, overdraft protection is utilized by members to allow them access to essential goods or services when faced with an unexpected financial emergency or other cash shortfall, thus allowing a member's transaction to go through even if funds are not available in their account. Credit unions continue to hear from their members that overdraft protection is an important part of the benefits they receive as part of their membership.

Changes in member usage, improvements in technology, as well as a study of their own member's needs, has led many of Virginia's credit unions to proactively take steps in redesigning their overdraft protection programs while ensuring the service remains in place to protect their members. Credit unions have long had programs linking a member's savings account or a line of credit to ensure members are less likely to incur a fee if forced to overdraw their account. Additionally, credit unions often couple these programs with their financial literacy programs to help educate members on money and budget management to help avoid future or frequent overdraft use. It is important to note that each credit union must tailor their products and services to fit the needs of their members.

Credit unions were founded with the purpose of promoting thrift and providing provident credit. As not-for-profit financial cooperatives, any earnings a credit union acquires are reinvested into the credit union and distributed amongst its members by providing lower rates on loans, increased dividends, and reduced fees. Credit unions remain member owned, allowing one vote per member regardless of their means. They continue to exist to serve their members, putting people over profit, while providing the best products and services available in the marketplace. We strongly believe credit unions should retain the autonomy and flexibility to work with their members to develop solutions to secure their financial well-being.

We share Congress' concern for the financial well-being of America's consumers, especially those of who are underserved and thank you for holding this important hearing. Virginia's credit unions stand united in opposition to any federal or state legislation, or regulation which intentionally or unintentionally restricts credit unions' ability to provide safe and fair services to their members to ease the burden of short-term financial difficulties.

Sincerely,

Carrie R. Hunt
President/CEO
Virginia Credit Union League

Phone 434.237.9601
chunt@vacul.org

Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported

Overdraft (OD) and NSF (non-sufficient fund) fee revenue is based on reported values from January 2021 through September 30, 2021.

Blue shading reflects recent changes reported since approximately September 1, 2021 that are either already in effect or are planned to go into effect in the near term. Check with the bank or review your account agreement to confirm the details prior to opening an account. Some banks below also offer accounts with no overdraft or NSF fees, or with other terms that differ from the account terms listed below.

Bank	Overdraft/NSF Revenue for 9 months ended September 2021	No overdraft fees on any transactions[1]	No NSF fees	No overdraft fees on debit card purchases[2]	No overdraft fees on ATM withdrawals	No extended/ sustained overdraft fees	Size of overdraft and/or NSF fee[3]	Daily limit on number of overdraft/NSF fees[4]	Cushion before overdraft fee is charged[5]	Extended grace period
Wells Fargo Bank, N.A.	$1 billion		✓			✓	$35	3 ($105)	$5	next day
JP Morgan Chase Bank, N.A.	$924 million		✓		✓	✓	$34	3 ($102)	$50	next day
Bank of America, N.A.	$823 million		✓	✓	✓	✓	$10	4 ($40)	$1	--
TD Bank, N.A.	$347 million					✓	$35	3 ($105)	$50	next day

[1] Overdraft practices reflected in this chart exclude those associated with formal overdraft lines of credit or links to credit cards or savings accounts.

[2] This column describes non-recurring debit card transactions, like point-of-sale transactions. Recurring debit card transactions may still result in overdraft fees if the institution otherwise charges overdraft fees.

[3] If a bank's fee size changes based on the number of overdraft fees charged, the highest overdraft fee is reflected here.

[4] Unless otherwise noted, this limit applies to the total number of overdraft and NSF fees combined. Huntington and Santander appear to apply this limit to overdraft and NSF fees separately. From public information, it is not clear whether Fifth Third applies this limit to overdraft and NSF fees combined, or only to overdraft fees.

[5] Banks reflected here vary as to whether they apply de minimis buffers of up to $5 based on the size of the transaction, the size of the negative balance, or both. All cushions of $50 or more reflected here apply to the size of the negative balance.

Bank	Overdraft/NSF Revenue for 9 months ended September 2021	No overdraft fees on any transactions[1]	No NSF fees	No overdraft fees on debit card purchases[2]	No overdraft fees on ATM withdrawals	No extended/ sustained overdraft fees	Size of overdraft and/or NSF fee[3]	Daily limit on number of overdraft/NSF fees[4]	Cushion before overdraft fee is charged[5]	Extended grace period
Truist Bank	$301 million		✓			✓	$36	6 ($216)	$5	--
U.S. Bank N.A.	$242 million		✓				$36	4 ($144)	$50	next day
Regions Bank	$221 million		✓			✓	$36	3 ($108)	--	--
PNC Bank, N.A.[6]	$210 million		✓			✓	$35	1 ($35)	$5	next day
USAA Federal Savings Bank	$139 million	✓		✓	✓	✓	$29	3 ($87)	--	n/a
Huntington National Bank	$119 million						$36	4 each ($288)	$50	next day
Citizens Bank, N.A.	$115 million						$37	5 ($185)	$5	next day
Woodforest National Bank	$107 million					✓	$32	3 ($96)	$1	--
KeyBank N.A.	$80 million						$38.50	--	--	--
Fifth Third Bank, N.A.	$78 million						$37	3 ($111 in overdraft fees)	$5	next day

[6] Includes overdraft/NSF revenue of BBVA USA, which PNC acquired effective June 1, 2021.

Bank	Overdraft/NSF Revenue for 9 months ended September 2021	No overdraft fees on any transactions[1]	No NSF fees	No overdraft fees on debit card purchases[2]	No overdraft fees on ATM withdrawals	No extended/ sustained overdraft fees	Size of overdraft and/or NSF fee[3]	Daily limit on number of overdraft/NSF fees[4]	Cushion before overdraft fee is charged[5]	Extended grace period
Citibank, N.A.	$70 million			✓	✓	✓	$34	4 ($136)	--	--
Manufacturers and Traders Trust Company	$62 million		✓			✓	$15	1 ($15)	$5	--
Capital One, N.A.	$58 million	✓	✓	✓	✓	✓	n/a	n/a	see note [7]	n/a
Arvest Bank	$52 million					✓	$17	8 ($136)	--	--
Santander Bank, N.A.	$38 million						$35	3 each ($210)	$100	--
Bank of The West	$33 million						$35	5 ($175)	$5	--

Note: The chart reflects a snapshot of the CFPB's review of press releases, publicly available account disclosures, and news reports. We will continue to assess bank practices and update the chart periodically. Information on this chart has not been independently verified by the CFPB, and the inclusion of an institution on this list does not reflect a CFPB endorsement, or lack thereof, of the institution by the CFPB.

[7] Capital One announced "No-Fee Overdraft" which provides overdraft coverage of an unspecified amount.