May 8, 2024

The Honorable Sherrod Brown
Chairman
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tim Scott
Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Brown and Ranking Member Scott:

The Consumer Bankers Association (CBA) submits the following comments for the hearing titled "Consumer Protection: Examining Fees in Financial Services and Rental Housing." 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. CBA will focus our comments on the Consumer Financial Protection Bureau's (CFPB or Bureau) credit card late fees and overdraft rules as they are often inappropriately lumped into the White House's "junk fees" campaign, which purports to minimize fees charged to consumers by several industries, including but not limited to banks, lodging, transportation, groceries, and entertainment.

CBA member banks are the most highly regulated financial institutions in the country and support strong consumer protection laws. However, CBA is concerned that the CFPB's policies increasingly reflect the political party that controls the White House and are not those of an impartial regulator that guides the industry with a steady hand by listening to the viewpoints of all stakeholders to ensure the best regulatory outcomes for consumers are considered. Unfortunately, the CFPB's agenda appears to be driven more by polling data, not economic or accurate market data. This troubling trend was confirmed by the former Deputy Director of the White House National Economic Council, who recently left the White House, and commented two weeks ago that "Junk fees, out of 180 things they polled, was in the top three most popular actions. And that one sentence we wanted in the State of the Union ended up being four paragraphs.[1] The CFPB frequently proposes new rules to use for campaign talking points and short-term political gain, circumventing the evidence-based process required for new rulemakings and, at times, ignoring banking industry stakeholders' input. To make matters worse, the current CFPB Director regularly makes misleading public claims against banks, which erodes consumer confidence in the banking system and undermines efforts to bring more consumers into highly regulated and time-tested depository institutions.

Credit Card Late Fees

On March 5, 2024, the CFPB finalized its proposed rule that would cut the Federal Reserve Board's longstanding safe harbor for credit card late fees from $30 ($40 for subsequent late payments) to $8, without an inflation adjustment.[2] The CFPB's rule relied upon incomplete data that allowed it to be heralded by the Biden Administration as one of its biggest achievements in its overarching

[1] https://www.politico.com/newsletters/west-wing-playbook/2024/04/24/bidens-growing-junk-fee-movement-00154186
[2] https://www.consumerfinance.gov/rules-policy/final-rules/credit-card-penalty-fees-final-rule/

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campaign on “junk fees.”

First and foremost, credit card late fees are not “junk fees.” In contrast to so-called “junk fees,” which are often defined as hidden or surprise fees, credit card late **fees have been required by law for many years to be disclosed to the consumer upfront during the loan origination process.** These disclosures are not hidden or complicated agreements. In fact, they are presented in very clear and digestible disclosures that are easily understood by consumers. These disclosures are referred to as the “Schumer Box” and are included in one simple listing of fees at the beginning of all credit card agreements.

In addition to having clear and statutorily required disclosures, credit card penalty late fees serve an important, pro-consumer purpose recognized by the Truth in Lending Act: to deter consumers from paying late on their credit card bills which has long-term impacts on consumers’ financial health. While it may seem that late-paying customers could experience some short-term relief from this rule, it will likely result in far more long-term financial harm. The CFPB’s rule will make it easier for consumers to miss their credit card payments. As more consumers pay late, there is a higher chance they will become delinquent. Ultimately, consumers experiencing delinquency will lead to higher credit card balances carried month-to-month and lower credit scores. This can result in far worse consumer outcomes such as difficulty obtaining credit, or higher financing costs for housing, cars, and other necessary purchases. While the consumer may save $22 in the short term, these long-term costs will be so much greater. The CFPB does not even attempt to consider these long-term consumer harms in its proposed or final rule.

Beyond the important deterrent effect, another core purpose of credit card late fees is for card issuers to appropriately price loans commensurate with the risk associated with the borrower. Banks are required by their prudential regulators to manage and offset credit risk, and severely limiting the ability for credit card issuers to discourage late payments and limit losses will reduce access to credit for consumers with subprime credit profiles. The long-term costs and impacts of this rulemaking on consumers are unclear. However, analysis from industry and even the CFPB suggests a majority of consumers could see their costs increase because of this rule.[3] The CFPB’s rule departs from traditional risk-based pricing practices required by prudential regulators, resulting in high cost of credit and reduced credit access for consumers who pay their bills on time.

While the CFPB and Biden Administration may frame this as “the rich subsidizing lower-income consumers” or “prime credit consumers subsidizing subprime consumers,” the CFPB’s own research shows that nearly 50 percent of subprime issuers pay their bills on time.[4] The Bureau claims that this rule could help some credit card customers, in particular those who frequently pay late, but the proposal itself confirms that the Bureau lacks data analysis needed to truly understand its consumer impact. The Bureau acknowledged that cardholders who never pay late– which the CFPB’s own data indicates is 74 percent of all Americans with credit cards– will not benefit from the reduced fees and could experience “…higher maintenance fees, lower rewards, or higher interest on interest-paying accounts,” and increased costs could completely negate any benefits.[5]

[3] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf#page=8
[4] https://consumerbankers.com/press-release/facts-matter-cba-uses-cfpb-data-to-set-record-straight-on-card-act-report/
[5] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=227

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Overdraft

The Electronic Fund Transfer Act provides consumers with a choice to opt into their bank's overdraft program and be charged a fee for overdrafts, so overdraft fees also cannot be characterized as hidden or surprise fees. Consumers utilize this choice to have overdraft protection, and this is one of the most popular products banks offer to ensure consumers can access the liquidity needed to cover essential expenses. Much like the "Schumer Box" for credit cards, and in addition to required disclosures, most banks have adopted simplified checking account disclosures utilizing a disclosure format based on "Pew's Model Disclosure Box for Checking Accounts." This format uses terminology associated with checking accounts and highlights fees and features that are most common, including any fees associated with overdraft services. This model disclosure box is designed to provide consumers with clear and consolidated information about the checking account information most important to consumers. Banks have invested significant resources developing these simplified disclosures to give customers clarity of terms when shopping for checking accounts and to allow them to make their own informed decision about their overdraft service needs. Banks also have dedicated considerable resources to providing consumers with educational tools to navigate overdraft, how it works, and how to avoid it. These include dedicated financial education websites, seminars, community meetings, and school-focused programs. Banks also regularly partner with consumer groups to enhance awareness of the products and services being offered and incorporate helpful feedback to further ensure what is released is in the best interest of the consumers they serve.

Recent survey data reaffirms how critical it is for consumers to be able to access overdraft services. Consumers who overdraft report that they primarily use the service for essential expenses, with the top purchases being food, utilities, auto loan payments and other transportation costs, credit card bills, mortgage, rent, and medical expenses. Importantly, many of these expenses would incur their own late fee or other penalty if they are not paid on time. As a result, only six to ten percent of consumers who overdrafted would be willing to forgo the transaction instead of using overdraft. Additionally, two-thirds of consumers who overdraft frequently said they lacked alternative sources of credit.[6]

On January 17, 2024, the CFPB proposed an overdraft rule that would fundamentally restructure and restrict consumer overdraft services offered by banks that exceed $10 billion of assets. The proposal would deem overdrafts to be extensions of credit subject to Regulation Z, including the rules applicable to credit cards, unless the bank restricts its overdraft fees to proposed benchmark thresholds ($3, $6, $7, $14) or calculates its "breakeven" costs.[7]

For more than a decade, and particularly over the last several years, banks have innovated and competed to create a range of highly tailored, consumer-friendly products that aim to support each bank's consumers best. The CFPB's market analysis produces tables comparing overdraft services offered by the top 20 banks, with nine different dimensions of product options for consumers ranging from no overdraft fees for any transactions, to daily limits on the number of overdraft

[6] https://consumerbankers.com/press-release/cba-releases-national-empirical-survey-results-showing-consumer-value-and-need-for-bank-overdraft-products/
[7] https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-close-bank-overdraft-loophole-that-costs-americans-billions-each-year-in-junk-fees/

transactions, to extended grace periods, to cushions before overdraft fees are charged– up to $50.[8] Further, banks have innovated and may compete by offering additional features not captured by the CFPB's reports, such as: real-time payment updates; payment control, so that consumers can choose to pay or return certain individual checks and payments when their balances are negative; and low balance alerts.[9] Alarmingly, the CFPB's proposed rule ignores these trends and cites data that is more than a decade old in its evaluation of the overdraft market.[10] The CFPB's reliance on this decade-old data means that its proposed rule fails to account for major shifts in market practices and innovations and relies on inaccurate data to justify its rulemaking.[11]

Overdraft fees are projected to have declined by 82 percent since 2008, or $167 of annual savings per U.S. adult.[12] While these innovations have been taking place for more than a decade, the CFPB's own data shows that **there has been a $5 billion reduction of overdraft fees from 2019 to 2022 because of these bank-led– not government-led– innovations;** a nearly 50 percent drop since before the pandemic. More recently announced changes to overdraft programs are projected to save consumers $18.3 billion from 2021 to 2025, more than $3.5 billion per year.

Before the CFPB takes further action, we urge the Bureau to collect the relevant data to assess consumer impact and conduct a comprehensive study of consumers' preferences regarding overdraft services. In particular, CBA recommends that the CFPB collect, analyze, and update data on the use of overdraft services, with particular attention paid to frequent users of overdraft services and those who struggle to access other alternative forms of credit such as credit cards.

Yet, as part of the administration's push for policy messaging regarding so-called "junk fees," the CFPB has proposed a rule to fundamentally change overdraft. Unfortunately, the CFPB's proposed rule has not taken any of these changes into account, and instead uses faulty data nor does the Bureau account for the true impact to consumers– many of whom could lose access to these important products should the rule be finalized as is. The Bureau's overdraft proposal has the potential to undo the years of progress banks have made by instead forcing all banks to offer their overdraft products at certain government-imposed prices. As a result, this proposal's one-size-fits-all approach would hinder innovation, limit competition, and hamper banks' ability to provide this essential product to the millions of consumers who rely on it.

Conclusion

The political shifts at the CFPB have been significant from administration to administration, and Bureau policy inevitably reflects these differences in political philosophies. However, the Bureau's

[8] https://files.consumerfinance.gov/f/documents/cfpb_overdraft-table_2023-05.pdf
[9] https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies
[10] https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf
[11] For example, when the proposed rule states that a majority of overdraft fees are paid by frequent overdraft users (ten or more overdrafts a year), who constitute approximately nine percent of all checking accounts, it importantly does not reflect the current state of the market. It fails to account for the significant consumer-friendly innovations introduced into the market by the largest institutions or how those changes have improved consumers' financial health. More recent surveys of consumers from the Financial Health Network estimate that frequent overdrafters comprise nine percent of all overdrafters (as opposed to overall checking accounts, per the Proposal).[11] CBA's survey found that only three percent of respondents who reported overdrafting in the last 12 months did so ten or more times (or less than two percent of all consumers in the study).
[12] https://curinos.com/our-insights/update-competition-drives-overdraft-disruption

recent actions have raised important questions about whether it is prioritizing politics over people. Banking agencies must stop writing regulations for short-term political wins and renew their commitment to principled policies that are truly for the people. We call on Congress to recognize the benefits of credit cards, overdraft services, and other services provided by highly regulated retail banks and reject the administration's misleading "junk fees" narrative.

Sincerely,

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