

February 14, 2025

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

Dear Chairman Scott:

The undersigned trade associations write in support of S.J.Res. 18, a Congressional Review Act (CRA) resolution to disapprove the Consumer Financial Protection Bureau's (CFPB or Bureau) final rule on overdraft protection programs, issued by then-Director Rohit Chopra in the final days of his tenure. We appreciate your efforts to invalidate this deeply flawed, harmful rule.

Overdraft protection services provide a needed form of short-term liquidity for millions of consumers who— following receipt of a consumer-tested disclosure— opt in to use the product to cover emergency or unexpected expenses that overdraw their accounts. If not invalidated, former Director Chopra's final rule will effectively bring an end to overdraft services for consumers who have few, if any, other options for meeting short-term liquidity needs. Moreover, the rule goes well beyond the agency's statutory authority, reversing 55 years of consistent interpretation of the Truth in Lending Act and Regulation Z by the agencies charged with enforcing the statute and by the courts that have ruled on its scope, all to advance the previous administration's political campaign against "junk fees." We urge Congress to pass the disapproval resolution without delay.

First and foremost, overdraft fees are not "junk fees" as the previous administration claimed.¹

- The Electronic Fund Transfer Act and the Federal Reserve's 2009 implementing regulations provide consumers with a choice, when a depository account is opened, to opt into their financial institution's overdraft program and be charged a fee for overdrafts for debit card transactions at ATMs or points of sale at merchants.² Importantly, the rule gives consumers an unfettered right to opt in *and* out of overdraft services at any time without question or cost. Financial institutions cannot place customers into overdraft protection programs without their consent.
- Overdraft fees are well disclosed by financial institutions when an account is opened, as required by law.³ If an overdraft fee is assessed, a financial institution is required to clearly disclose the fee on the customer's monthly statement along with notices of their ability to opt out of the service.
- Many financial institutions have gone beyond what is required by law and adopted a simple, easy to read disclosure that informs consumers of all fees associated with any checking account, how those fees are assessed, and how they can be avoided.⁴

¹ <https://consumerbankers.com/press-release/myths-vs-facts-fact-checking-the-cfpbs-overdraft-rule/>

² <https://www.fdic.gov/resources/consumers/consumer-news/2021-12.html>

³ <https://www.federalreserve.gov/boarddocs/caletters/2009/0914/09-14-attachment.pdf>

⁴ https://www.pewtrusts.org/-/media/assets/2014/08/pews_updated-model_disclosure_box.pdf

Before the CFPB released its overdraft proposal, many financial institutions had proactively made changes to their overdraft programs to reflect competitive developments within the industry. These innovations include sending low balance alerts, imposing a *de minimis* threshold triggering an overdraft fee, capping total fees that the bank may charge per day, and providing overdraft “grace periods” during which a customer can make a deposit and avoid a fee. Additionally, some banks no longer charge overdraft or NSF fees, and many banks offer overdraft-free accounts that meet the Bank On initiative’s National Account Standards.⁵

The CFPB’s own research confirms that, as a result of banks’ innovations, consumers are paying less in overdraft and NSF fees now than they did four years ago.⁶ The CFPB’s own data shows that there was a \$5 billion reduction of overdraft fees from 2019 to 2022 because of these financial institution-led– not government-led– innovations, a nearly 50 percent drop since before the pandemic.⁷ More recently announced changes to overdraft programs are projected to save consumers \$18.3 billion from 2021 through 2025, more than \$3.5 billion per year.⁸

Recent survey data affirms how critical it is for consumers to be able to access overdraft services.⁹ Consumers who use overdraft indicate 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.¹⁰ Indeed, studies have found that the average transaction that overdraws the customer’s account is in the hundreds of dollars.¹¹ Moreover, the consumer would incur late fees or other penalties if the bill is not paid on time, and these fees are often significantly more expensive than an overdraft fee.

Consumers who frequently overdraft also report that they lack credit alternatives. Additionally, according to a Federal Reserve survey, more than 80 percent of consumers who overdraw their accounts know the fee in advance.¹² Not surprisingly, survey after survey shows that consumers appreciate and value their institution’s overdraft program and are glad that their institution covered their overdraft payment, rather than returned or declined the payment.¹³

⁵ <https://cfefund.org/bank-on-national-account-standards-2023-2024/>

⁶ <https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies/>.

⁷ <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/>

⁸ <https://consumerbankers.com/press-release/cba-reaffirms-opposition-to-ideologically-driven-campaign-misrepresenting-well-regulated-bank-fees/>

⁹ <https://consumerbankers.com/wp-content/uploads/2024/04/2024.03.21-CBA-Overdraft-Survey.pdf>

¹⁰ <https://consumerbankers.com/press-release/cba-releases-national-empirical-survey-results-showing-consumer/>

¹¹ <https://www.aba.com/-/media/documents/archives/white-paper/small-dollar-whitepaper2017apr.pdf?rev=a23e7b77d16243d88504ac15278f269d> (see p. 18);

<https://curinos.com/our-insights/competition-drives-overdraft-disruption/>. In addition, one midsize ABA member bank reported that the average dollar amount of an item paid into overdraft where a fee was charged was \$312 in 2023.

¹² <https://consumerbankers.com/blog/facts-matter-correcting-the-record-on-the-biden-chopra-cfpbs-own-brand-of-debanking/>

¹³ <https://consumerbankers.com/press-release/cba-releases-national-empirical-survey-results-showing-consumer-value-and-need-for-bank-overdraft-products/>; <https://www.aba.com/about-us/press-room/press-releases/national-survey-on-major-bank-policy-issues>.

On December 12, 2024, then-Director Chopra finalized a rule that will fundamentally restructure and restrict consumer overdraft services offered by financial institutions that exceed \$10 billion of assets.¹⁴ The final rule declares overdraft services offered by banks and credit unions with more than \$10 billion in assets to be “credit” regulated by the Truth in Lending Act (TILA) and Regulation Z unless the overdraft fee is below a \$5 price cap (the “benchmark” fee) or below the institution’s “breakeven” costs to operate its overdraft program. The rule thus will create a one-size-fits-all government-mandated banking service that operates under a separate and more restrictive regulatory framework for banks and credit unions above \$10 billion of assets, reducing access to checking services for customers at financial institutions.

Former Director Chopra’s final rule would apply TILA and Regulation Z to overdraft despite the fact that nothing in TILA suggests that overdraft services are credit. Indeed, the final rule reverses 55 years of consistent interpretation of TILA and Regulation Z by the agencies charged with enforcing it and the courts. In addition, TILA is a disclosure statute; Congress established a consumer protection regime grounded on clear disclosure and consumer choice, not regulation of the terms of consumer credit products. Yet Director Chopra’s final rule goes far beyond mandating disclosure and would impose substantive restrictions on bank overdraft services, to the detriment of the millions of consumers that elect to use it to cover unexpected expenses.

Former Director Chopra purports to apply his final rule only to banks and credit unions with assets above \$10 billion, but if the rule takes effect, all bank customers and credit union members will be detrimentally impacted. Large banks will be forced to lower their overdraft fee to the benchmark fee of \$5 or to discontinue or restrict access to overdraft services. If a large bank reduces its overdraft fee to \$5, the community bank and credit union down the street will feel compelled to do the same or risk losing its customers to the large bank. Community banks and credit unions have limited product lines and fewer sources of revenue to offset reduced overdraft fee income; therefore, the overdraft rule may lead to greater consolidation in the banking industry.

Former Director Chopra also failed to meet the CFPB’s statutory cost-benefit analysis requirements, as he relied on data that did not include overlooked credit invisible consumers who lack traditional access to financial institution-offered credit products. Accordingly, former Director Chopra failed to include the most critical one-fifth of Americans in its impact analysis, who will be irreparably de-banked by its rulemaking.¹⁵

In issuing the final rule, former Director Chopra did not consider the rule’s true impact on consumers, many of whom would lose access to this important service.¹⁶ The final rule will undo the years of progress financial institutions have made by instead forcing all institutions to offer their overdraft services at certain government-imposed prices. The rule will hinder innovation, limit competition, and hamper financial institutions’ ability to provide this essential service to the millions of consumers who rely on it.

¹⁴ <https://www.consumerfinance.gov/rules-policy/final-rules/overdraft-lending-very-large-financial-institutions-final-rule/>

¹⁵ <https://consumerbankers.com/press-release/cba-statement-on-cfpbs-misleading-overdraft-press-release/>

¹⁶ <https://consumerbankers.com/press-release/new-cba-survey-illustrates-consumer-harm-of-cfpb-overdraft-proposal/>; <https://consumerbankers.com/press-release/what-they-are-saying-setting-government-price-controls-on-overdraft-services-ignores-market-realities-harms-consumers/>

Because of the rule's numerous fundamental failures, the Consumer Bankers Association, the American Bankers Association, America's Credit Unions, the Mississippi Bankers Association, and several banks filed a lawsuit challenging the CFPB's final rule on overdraft services.¹⁷ We urge the administration to rescind the rule and urge Congress to pass this resolution to reject it.

Sincerely,

Consumer Bankers Association
Independent Community Bankers of America
America's Credit Unions
Bank Policy Institute
American Bankers Association

¹⁷ <https://consumerbankers.com/press-release/cba-financial-trades-and-banks-file-lawsuit-against-cfpbs-overdraft-final-rule/>