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EXAMINING OVERDRAFT FEES AND THEIR EFFECTS ON WORKING FAMILIES

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING WAYS TO LOWER THE EVERYDAY COSTS FOR AMERICANS AND TO ENSURE STABILITY IN THE FINANCIAL INSTITUTIONS THAT SERVE THEM

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C O N T E N T S

WEDNESDAY, MAY 4, 2022

WITNESSES

Additional Material Supplied for the Record

EXAMINING OVERDRAFT FEES AND THEIR EFFECTS ON WORKING FAMILIES

WEDNESDAY, MAY 4, 2022

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION,
Washington, DC.

The Subcommittee met at 2:30 p.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Raphael G. Warnock, Chair of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIR RAPHAEL G. WARNOCK

Chair WARNOCK. Good afternoon. This Subcommittee hearing will come to order.

Welcome to the third hearing of the Subcommittee on Financial Institutions and Consumer Protection this Congress. This hearing is in a hybrid format. Our Members are in person, but we will have witnesses testifying both in person and by video. We are grateful for their presence.

I am honored to chair this Subcommittee and to work with Ranking Member Thom Tillis to lower the everyday costs for Georgians and Americans and to ensure stability in our financial institutions that serve families, small businesses, and communities in Georgia and all around our country, and I am proud of our efforts to ensure that communities have equal access to the financial resources that build an economy that works for all Americans.

Today's hearing will examine the financial services industry's practices and innovations around overdraft fees and the effects these fees, or lack of fees, have on hardworking families.

The economic turbulence of the COVID–19 pandemic has pushed working families to the brink. Thanks in part to the relief passed by Congress to combat the pandemic, including the American Rescue Plan, our Nation is recovering and rebuilding. Still, there is more Congress must do to bring financial stability to hardworking families in Georgia and all across the country.

And heavy overdraft fees, these onerous fees, keep people within cycles of debt and poverty. Last December, the CFPB released a report that many banks have a, quote, deep dependence on overdraft fees. Some banks that make billions of dollars per year pad their profits with billions more from charging disproportionate fees, as much as $38 for overdrafting just a few dollars beyond what is allowed. And so someone swipes their card for $2 cup of coffee, as

working families work from day to day to make their lives work, and they end up spending 40 bucks for a $2 cup of coffee.

Fees are also keeping hardworking Americans out of our financial system, particularly those living on the edge of our economy. One-third of unbanked households cite high fees as a reason that they remain without a bank account.

And we know these types of fees affect people of color at a disproportionate rate. Studies have found that, on average, banks with branches in predominantly Black neighborhoods charge more for overdraft services. In addition, customers who overdraft the most throughout the year tend to have lower income, poor credit scores, and are disproportionately Black and Hispanic. It is a vicious cycle.

In response to the uncertainty brought on our Nation by the pandemic, many banks moved to waive credit fees charged to their customers, like overdraft fees and fees for nonsufficient funds. This is in sharp contrast to how the industry responded after the 2008 financial crisis. And I want to applaud those banks for making the right choice to help communities, and they have demonstrated that it is possible to make the right choice and still be prosperous in their businesses.

Some of these same banks have now voluntarily made these changes permanent, and every month, to their credit, we hear of more following their peers in doing the same. That is good news. Additionally, many fintech companies, like the one before the Subcommittee today, are also offering innovative new products and services to help customers avoid fees.

This is not theoretical stuff for me. I have heard from Georgians directly about the negative effects overdrafts can have on their lives, and overdraft fees. In the CFPB's request for feedback on fees, one Georgian serving in our military wrote about how technical glitches and shady business practices by their large bank cost them money and stress even while they were preparing to deploy to a war zone. In another comment, a student at Georgia Tech wrote about how what little money they had while studying for an engineering degree was being, quote, skimmed off by these fees.

This is also personal for me. In addition to serving as a Senator for Georgia, I am also the senior pastor of the historic Ebenezer Baptist Church in Atlanta. My church counts among its parishioners Georgians from every walk of life, and we look out for each other.

As a pastor and a Senator, I see my work as grounded in serving others and my community, and I want to extend this call to our Nation's banks, credit unions, fintechs, and other financial institutions. I believe Congress, and this Subcommittee in particular, have an important role to play in ensuring that the financial institutions that support our communities and our small businesses and working families have the resources, tools, and support to continue their important work. Nevertheless, at the same time, we must hold financial institutions accountable when they juice their profits off the backs of struggling, vulnerable Americans and ensure that they are not looking at these customers as easy marks to be taken advantage of with onerous or opaque fees.

I remain focused on lowering costs for Georgians and saving them money. Like all of my hearings, this hearing in the end is about helping people, ordinary people, hardworking families, and helping small businesses. As American families, small businesses, and communities recover, we must ensure they have the resources they need not only to survive but also to thrive.

So, welcome and thank you so very much for being here.

I will now turn to Ranking Member Tillis for his opening statement.

OPENING STATEMENT OF SENATOR THOM TILLIS

Senator TILLIS [presiding]. Thank you, Chairman Warnock, for holding this hearing and thanks to the witnesses here in the committee room and connecting virtually.

I have long supported the policies that ensure the United States enjoys the healthiest and most diverse financial services ecosystem in the world. Our current mix of globally systemic financial institutions, superregionals, regionals, local community banks, and credit unions, along with an increasing number of fintechs, provide tremendous consumer choice across a wide variety of platforms and products. The topic of overdraft fees is no different.

The financial services industry has worked to tailor its products and create new ones, all while responding to changes in Government regulation, financial innovation, and obviously the needs and preferences of the American consumer. While there have been voices in Congress and Federal regulators advocating for further action in this space, I believe it is clear the financial services industry has, through the market powers of competition and innovation, already adopted consumer-friendly policies and products regarding overdraft.

It is critical to understand, since 2010, debit overdraft services at point of sale ATMs can only occur after consumers expressly opt in to be a part of the program, and not only do consumers have to opt in to the arrangement, the data shows that greater than 60 percent of all overdrafts occur when consumers intentionally utilize the service. Comments by some insinuating that financial institutions trap unaware customers into these products, when consumers are presented with opt-in provisions from the start and subsequent notifications explaining they can terminate the services at any time, seem to be unfounded.

Likewise, it is important to point out that following the 2008 financial crisis some Federal financial regulators under the Obama administration emphasized the reliable and countercyclical nature of overdraft revenue as an appropriate tool for ensuring the stability of the banks' balance sheets. Some went so far as to express the desire to see overdraft revenue when grading banks on the well-known CAMELS rating system. The irony that banks may now run afoul of Federal regulators on overdraft, after being encouraged to seek it out by many of the same regulators a little more than a decade ago, is not lost on me.

Despite these headwinds, the financial services industry has innovated, adapted, and responded to regulators' and consumer needs. From fintechs that supply short-term liquidity protection to banks and credit unions implementing consumer friendly policies

that allow for increased flexibility as consumers near a zero balance, the American financial services system continues to provide unprecedented levels of consumer choice, and they are increasing every day.

Some financial institutions have moved to eliminate overdraft fees. Others have drastically reduced fees associated with utilizing the service or increased overdraft coverage. What is abundantly clear across the board is that these institutions have taken these actions without the need for overarching or burdensome Government regulation through competition.

Data bears this point out. According to a report from the data analytics company, Curinos—this is their quote—frequent overdraft use fell by 40 percent to 4.9 percent between 2010 and 2020 in the U.S. Overdraft revenue fell approximately 57 percent, from $40 billion in 2008 to $17 billion in 2019.

The report goes on to note that 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 percent improvement in account acquisition since 2017. Financial institutions that have not adopted overdraft innovation have experienced nearly a 30 percent reduction in consumer acquisition. The market forces seem to be working. These are dramatic shifts that have not needed lawmaking or regulation to become a reality.

As such, I would ask my colleagues on this Committee and others across Congress, and within the regulatory agencies, to understand that contemporary overdraft policies are decidedly pro-consumer. Fees for many are nonexistent. For others, they have largely been reduce to the smallest amount necessary to cover operational costs, mitigate risk, or deter habitual use by a customer. They are known to the customer, and they simply should not be classified as junk fees despite what some wish to allege. I look forward to exploring this issue further with Chairman Warnock.

I will say in closing there is no doubt in my mind that some people may get caught up in a bad practice, but let us not cast the entire industry as being bad actors. I think the industry is moving in the right direction. Consumer choice and competition is producing viable products. So let us narrow our focus in Congress to not add more burdens to the majority of the industry that, in my opinion, is doing a good job.

Thank you, Mr. Chair.

I believe the Chair and I have agreed. He is gone. We are playing ping-pong now with vote-a-rama, or many vote-a-rama I guess we could call that today, and so I apologize that he is not present.

But testifying today will be: Aaron Klein, who is the senior fellow in Economic Studies at the Brooking Institution. Also testifying is Mr. Jason Wilk, who is the founder and Chief Executive Officer of Dave. Mr. Wilk will be testifying remotely from California.

Mr. Wilk, can you hear us?

Mr. WILK. I can.

Senator TILLIS. Good. And then finally, our last witness is David Pommerehn, who is the Senior Vice President and General Counsel of the Consumer Bankers Association.

We appreciate your testimony today. I am going to turn to you, but before I do maybe I should wait until Chair Warnock comes

back to get unanimous consent. I think, procedurally, I cannot do it until another Member is in the room for a statement from the American Bankers Association. So I will hold that when he is back present.

So we will go ahead and start with Mr. Klein. Welcome.

STATEMENT OF AARON KLEIN, SENIOR FELLOW IN ECONOMIC STUDIES, BROOKINGS INSTITUTION

Mr. KLEIN. Thank you very much, Chairman Warnock, Ranking Member Tillis. Thank you for holding this timely hearing.

Many banks have announced sweeping changes to their overdraft policies. By my calculations, changes in policies announced by 14 banks, including most of the largest, will amount to $5 billion a year in savings for families living paycheck to paycheck. If these savings were distributed evenly across the country on a per capita basis, a State like Georgia would expect savings of $162 million a year. Industry made sweeping changes without any new legislation or new regulation, as Senator Tillis rightly pointed out, and I commend these banks for their actions.

Today, I will focus on three main points, all of which are covered in more detail in my written testimony: one, understanding overdrafts, two, examining changes in overdraft policies, and three, additional policy solutions which are still needed to address the core problem; the less money you have the more money it costs to manage your money.

The key to understanding overdraft is that a small number of consumers account for the vast majority of fees; 80 percent of overdraft revenues come from 9 percent of account holders. These heavy overdrafters pay, on average, $380 a year in overdraft fees, and as Chairman Warnock rightly pointed out, cost is the main reason people leave the banking system.

Overdraft revenues vary substantially among banks. Some large banks average more than seven times as much as others in fees per customer. It is hard to imagine that among the Nation's largest banks this variation in their share of heavy overdrafters is this drastic. Hence, practices and products offered by banks allow some to generate much more revenue than others. For a handful of small banks, overdraft is the business model. The small Woodforest National Bank, operating mostly in the Southeast, generates more in overdraft revenues per year than Citibank. Regulators have been asleep at the switch, giving these banks passing regulatory grades with this unsafe and unsound business practice.

I want to talk about the changes the banks have been making in overdraft fees, and they broadly fall into four buckets: reducing fees, changing time, providing small-dollar liquidity in different forms, and consumer empowerment. My written testimony goes into detail on all four, but I want to focus your attention on one of the most impactful and least appreciated, changing time.

Overdraft is as much about running out of time as money. People go negative in their bank account due to the mismatch in time between credits and debits. These problems are exacerbated by America's antiquated payment system. Among the solutions the banks have made are 24- to 48-hour grace periods and giving consumers

earlier access to their wages, a reminder that direct deposit is far from instant.

Time is money. The provision of extra time is huge. PNC, among the first banks to change overdraft fees, reports that 63 percent of their customers who end the day with a negative balance are able to fix the problem and avoid an overdraft thanks to extra time. The average time to cure is only 13 hours, evidence the majority of their customers' problems are very short-term mismatches. From PNC's experience, 75 percent of the reduction in overdraft fees was the result of extra time and change on the limits of total overdrafts.

For the Committee's consideration, I would like to offer five policy solutions to address the problems that harm working families.

First, stop overdraft giants with new regulation. Any institution that relies on overdraft fees for a majority of its profit in multiple consecutive years is operating in an unsafe and unsound business model.

Two, credit unions should disclose data just like banks. Currently, all banks over a billion dollars in size must tell us how much overdraft revenue they have. Credit unions should do the same.

Three, real-time payments. As Treasury Secretary Yellen recently stated, America's slow payment system is a tax on working families. If a subset of banks making payments faster can result in billions of savings for families living paycheck to paycheck, consider the impact of a full transition to real time payments. The Federal Reserve could solve some of this problem today using regulatory authority it was given, but it has not in 20 years, and it will not as long as it prioritizes operating its own payment system above regulating the Nation's payment systems. Legislation is needed, as previously proposed by Senators Warren and Van Hollen.

Fourth, we need smarter payment regulation.

And fifth, we need universal Bank-On-style accounts. All financial institutions should provide these accounts which the American Bankers Association has called best practices. That standard should be universal.

In conclusion, the explosive growth of America's overdrafts reveals deeper structural problems with our basic banking system. The positive changes by banks on overdraft fees are a step in the right direction but do not address the structural problems. More needs to be done.

I appreciate the opportunity to testify before the Committee and look forward to answering your questions. Thank you.

Senator TILLIS. Thank you, Mr. Klein.

Mr. Wilk.

STATEMENT OF JASON WILK, FOUNDER AND CHIEF EXECUTIVE OFFICER, DAVE

Mr. WILK. Good afternoon, Chairman Warnock, Ranking Member Tillis, and distinguished Members of the Subcommittee. Thank you for inviting me to participate in today's hearing. It is an honor.

The topic of the hearing aligns closely with the story of the company I started, Dave. First and foremost, Dave is a technology com-

pany building financial solutions to serve everyday Americans and working families who are struggling with some or all aspects of their financial lives. Dave is a powerful app designed to unlock fair financial services for the 170 million Americans who need it most, the financially vulnerable and financially coping. Our mission was, and is, to build products that level the financial playing field.

Everyday Americans are simply paying too much to access the financial system compared to those who are financially healthy. By estimates, there are 35 million people who are financially vulnerable, struggling with every aspect of their financial life. These individuals, who overdraft 10 to 20 times per year, are reliant on single-pay credit, need help building credit and finding new ways to make money.

Additionally, there are approximately 131 million who are financially coping, struggling with some but not all aspects of their financial life. This group is overdrafting several times per year, need help building credit, and need access to affordable, short- and long-term credit, savings, and investing advice.

Our goal in 2017 was to start by disrupting overdraft, a proven pain point for the both the financially vulnerable and the financially coping. Americans pay more than $20 billion annually in overdraft fees to traditional banks, with the typical transaction causing overdraft being those to buy gas and groceries.

I, myself, was a victim of significant amounts of overdraft fees when I was in college and following school. I had a job where my salary was capped at $30,000 a year, living in San Francisco and having to travel back to Los Angeles. I was consistently hit with overdraft fees while living on couches. And if it was happening to me, as somebody who grew up in a middle-class family, then I can only imagine the impacts as you move down the income scale, especially moving into predominantly minority and lower-income communities.

Through research and also based on my own personal experience, we realized that consumers are primarily using overdraft knowingly as a form of overpriced, short-term credit to buy everyday essentials. Against this backdrop in 2017, Dave launched an app where customers can link any bank account in the country and we offer them a far superior overdraft solution.

Our first product, called ExtraCash, is an underwritten, interest-free advance up to $250 that customers can use to buy everyday essentials without incurring overdraft fees. This product has changed lives and propelled Dave to over six billion customers in under 5 years. ExtraCash has been used over 50 million times as well. This product does not have any mandatory fees. In fact, part of the revenue is derived from customers paying what they think is fair by giving us a tip.

Our second solution to fight overdraft is called Insights, which notifies customers about upcoming bills like Netflix or water and power that could send a customer's account into negative status. We give customers up to a week of notifications in advance to help them cure bills that could cause their account to go negative.

Last, and a third part of our overdraft solution, was to be the first fintech to help put money back in our customers' pockets with a solution called Side Hustle. This product helps connect our cus-

tomers with the gig economy to companies like Uber, Instacart, DoorDash, Lyft, and other partners. We have facilitated nearly 3 million applications for work since 2019.

Dave's approach to overdraft has saved our members over $1.5 billion in overdraft fees and helped them earn over $300 million in income with Side Hustle. In 2021, we followed up with our own bank account launch, which we launched in December 2020 through a partnership with Evolve Bank & Trust. Dave Banking comes with no minimum balance or overdraft fees and has access to over 50,000 free ATMs. Our ultimate goal is to have customers migrate to this as their primary account status and stop paying these overdraft fees.

As you can see, at Dave, we are consistently adding services to our product set to improve our customers' financial health. To that end, later this year, we plan to add another, allowing customers to build their credit when using our Dave ExtraCash product for some of their regular transactions.

At the end of the day, Dave stands with the everyday person, the everyday mom or dad, who makes up the backbone of today's working family. We realize that overdraft is a short term credit solution for the next tank of gas or bag of groceries and it is critical to millions of Americans, but traditional financial services fail to deliver a fair product. At Dave, we are working to level the financial playing field for those who need it most.

Thank you again for the invitation to appear before you. I look forward to answering your questions.

Chair WARNOCK [presiding]. Thank you so very much. Sorry, I had to step out to vote. We have got a number of things going on as usual around here. Thank you, Mr. Wilk.

Next, we will hear from Mr. Pommerehn.

STATEMENT OF DAVID POMMEREHN, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CONSUMER BANKERS ASSOCIATION

Mr. POMMEREHN. Thank you, Chairman Warnock and Ranking Member Tillis and Members of the Subcommittee.

I am David Pommerehn. I am General Counsel for the Consumer Bankers Association. CBA represents the retail banking industry, whose products and services provide access to credit to millions of consumers and small businesses. I greatly appreciate the opportunity to testify before you today.

As Chairman Warnock mentioned at the beginning of his—in his opening statement, with ongoing financial difficulties exacerbated by the pandemic, average Americans are struggling to cover emergency cash-flow needs. Banks are aware of these challenges—of the challenges consumers are facing and are working diligently to provide access to safe and affordable products.

One important tool in meeting these needs is overdraft services. This product is largely based on necessity and choice and, for many, may be the last viable source of short-term liquidity.

In 2010, significant changes enhanced consumer protections for overdraft services by increasing transparency and improving disclosures. Changes to the Electronic Funds Transfer Act and the Truth in Savings Act required consumers be afforded the ability to affirm-

atively opt in to overdraft services for point of sale debit card transactions and for ATM withdrawals. These changes also required the consumer to receive disclosures concerning their right to revoke the decision to opt in at any time and including an accounts statement disclosure whenever they actually incur an overdraft fee. Consumer choice is central to the functionality of the overdraft product and allows for maximum transparency.

Consumer demand for overdraft services is also driving innovation, as we have heard before. This has led banks to increase the affordability and access for those who use overdraft to meet their cash-flow needs. A 2021 study, referenced by Senator Tillis, by Curinos, a global data intelligence firm, found that overdraft fee revenue is down significantly, roughly falling 57 percent from 2008 until 2019. Put in real dollars, overdraft fee revenue for banks fell from nearly $40 billion in 2008 to nearly $17 billion in 2019. Curinos projects that this significant decline in fee revenue will continue as a result of bank-led innovation.

In fact, this innovation is driving the market and competition, and organizations, as Senator Tillis referenced before, that have adopted better solutions for overdraft management have been able to increase their base growth accounts by about roughly 40 percent since 2017. Conversely, those institutions that did not make change saw roughly a 30 percent reduction in growth in their accounts.

Bank-led initiatives aimed to help consumers avoid fees have also dramatically reduced the number of small purchases tied to overdraft. Since 2008, the average size of a purchase triggering an overdraft fee quadrupled from $50 to $200.

The Curinos research also found consumers demonstrate a deep understanding of who they bank with and how they use overdraft. In fact, more than 80 percent of overdraft transactions come from consumers with the clear intention of using it to cover their emergency payments, and they are well aware that they would incur a cost and would like to incur a cost to make sure that they have access to that revenue stream.

Outside of overdraft, few options remain for consumers to meet their cash-flow needs within the highly regulated banking industry. In 2021, OCC Acting Comptroller Michael Hsu recognized overdraft services as one of the last viable sources of short-term liquidity for U.S. consumers. Additionally, just last week, CFPB Director Rohit Chopra underscored that the overdraft market is evolving and competition is benefiting consumers.

When debating policy affecting overdraft services, we urge policymakers to consider additional solutions to help consumers who need short-term cash-flow options, such as small-dollar loans. A recent bipartisan GAO study highlighted the fact that banks are hesitant to offer such loans in part because of ever evolving regulatory changes. Specifically, the GAO noted that in 2013 to 2020 Federal regulators issued 19 separate policy considerations related to small-dollar loans. These changes create doubt about the stability of future regulations concerning short-term loan products and adversely impact consumer access. Without access to affordable bank-offered products and services, consumers will be forced to turn to alternative, underregulated products offered by ill-supervised organizations.

Banks are listening to their customers. They are investing significant resources toward innovating and reducing the cost of overdraft services, and it is benefiting the families they serve.

We encourage policymakers to work with all stakeholders, including doing direct consumer research, to avoid any unnecessary restraint to overdraft products.

I thank you for your time, I thank you for the ability to appear here today, and I look forward to your questions.

Chair WARNOCK. Thank you all so much for your testimony, and let us begin with our questions.

In many cases, Americans who overdraft are likely to do so more than once. According to the CFPB, banks charge 80 percent of their overdraft fees to fewer than 9 percent of account holders and the majority of fees collected come from an even smaller percent of that group. The CFPB also found that consumers who frequently overdraft are more likely to be credit constrained, have lower credit scores, and are less likely to have access to affordable credit. These are everyday, hardworking people.

Mr. Klein, is the use of overdraft services a symptom of financial distress, and what point do these fees only contribute to that cycle?

I would also like to hear your comment about where the banks are in terms of their collection of overdraft fees. We heard the data around 2019, but I think last year banks earned $33 billion in overdraft fees. Could you respond to that and speak to the use of overdraft fees and whether or not you see that as a symptom of financial distress? And, do these fees help people, or do they contribute to the cycle?

Mr. KLEIN. So, Chairman, thank you very much for that thoughtful question because it is both a symptom and a cause. If you have $380 a year in overdraft fees, that is 1 percent of your income if you earn $38,000 a year, which is, you know, a reasonable—not that far off of the median wage, particularly in some parts of the country.

And as you point out, these heavy overdrafters, who use the product frequently, have become targets for certain banks and certain business models who actively seek to find them. You mentioned the member in Georgia of the military. Well, Armed Forces Bank, which makes more than 75 percent of its profit on overdraft fees, averages $150 a year in overdraft fees per account. Most of the banks with good practices are at $5, $10 a year, and the other banks that are making changes are headed in that direction.

They make $150 a year, and Moody Air Force Base in Georgia is one of their locations. Right. They are targeting these folks. And it is not so easy, if you are enlisted and deployed, to change your bank and do all those different payments and all those streams.

So it is a symptom; it is a symptom both of not having enough money and not having enough time. As the data shows from PNC and other banks, and my own research shows, time is money.

Seventy percent of customers at a check cashing store have a bank account. Now why are you at a check cashing store if you have a bank account? Well, on Friday, if I get a check, how am I going to pay for my mom's flowers on Mother's Day? If I deposit it in a bank, the money will not be there until Monday, Tuesday,

maybe Wednesday. I do not know for sure. The bank does not know for sure. Check casher gives me cash.

It is one of the reasons why $66 million of the first round of stimulus checks—because, remember, the Treasury sent checks to 70 million families—ended up in the hands of check cashers. So I think it is both a symptom and a cause.

For your second part of your questions, I am not sure about that Curinos study. I read the appendix. It was like a 1 page pamphlet, not a study in there.

You know, there are two different data sources a lot of people use. One is a CFPB, which shows 15 to 16 billion a year, and the other is this Moebs study, which is like 30 to 35 billion a year, and it is hard to reconcile the two sometimes.

There are two differences in them that have popped up. One is Moebs counts credit unions, which I think nobody here knows the data on it because they are exempt from filing. I do not know why if you run a $30 billion a year credit union why you cannot tell the same as a bank. And two is there is an assumption in the Bureau's methodology that all banks operate in the same fashion, and so the small folks are like the big folks and if I know the total share.

I question that assumption. For my own data, there are a handful of banks for whom these heavy overdrafters are their entire business model, and that is a very different type of institution. It is more like a check casher with a banking charter than a big, diversified bank that you describe, which makes money off of overdraft but makes money off of a lot of other things.

Chair WARNOCK. Thank you so much.

Do you believe that the low fees—well, Mr. Wilk, for consumers who frequently use your company's services, what effect does your company have on customers' overall financial health, and do you believe that the low fees that your service charges encourages more overdrafting?

Mr. WILK. Thank you for the question, Chairman. So ultimately, we view overdraft as a positive product. It is just the fees that people have access to are punitive and the ones that we are trying to eradicate.

The average customer at Dave, when they connect their account, we are able to see their past year of transactions so we can see that our average member is spending about $400 in overdraft fees to their bank. After using Dave, we can cut that down significantly just by providing our own advance feature on top of their existing bank account. That saves our customers, on average, about $150 to $200 per year in fees as their banks are still able to charge them fees for some elements of overdraft we are not able to prevent them from. If we can get a customer to sign up for our own checking account product, we can eradicate those fees entirely as our checking account does not have any overdraft fees or minimum balance fees.

Ultimately, what we are trying to do is help the average customer be able to afford a $400 emergency, which most Americans cannot afford. I think it is about 60 percent of people cannot afford a $400 emergency. And so we think we are making meaningful progress on our ability to cure that for customers.

Additionally, with our upcoming credit building solution, our focus is on how we can graduate our members from overdraft into more reasonable, short-term credit solutions.

Chair WARNOCK. Thank you so much. We continue with our questions, and I will turn now to Ranking Member Tillis.

Senator TILLIS. Thank you, Chairman Warnock. Again, thanks to the witnesses for being here.

Mr. Pommerehn, I want to make sure I have got this right. You have to opt in to an overdraft program, right?

Mr. POMMEREHN. Yes, sir, for point-of-sale, debit card transactions, and for ATM transactions, you have to affirmatively opt in at account opening.

Senator TILLIS. And I do not know if you have any research data, but do you think that many of those who consciously decide to opt in see value in the program?

Mr. POMMEREHN. Well, as the Curinos study shows—and I apologize for just the 1-pager in the appendix. We will provide the full study to the Committee.

Senator TILLIS. Yeah.

Mr. POMMEREHN. To the witnesses. It points out 80 percent of consumers who opt in, in fact, use the product knowingly, and so it is a product consumers want even in the—even when there are other products that do not offer overdraft services at all or even offer an opt in to those overdraft services.

Senator TILLIS. What do you think about the characterization of this as a junk fee? It appears to me to serve a purpose.

Mr. POMMEREHN. It does; it serves a—it does serve a purpose. It covers liquidity needs for consumers who do not have other alternatives, for the most part. Knowingly using an overdraft product creates a situation in which a consumer can get that gas or can get those groceries that they need to use, but they have to affirmatively opt in to do so first.

If the product is not opted in—if you do not opt into the product, you do not receive the service. That is bottom line.

So consumers who utilize the service often use it to cover those emergency liquidity needs, and I would say that there are not a whole lot of viable solutions on the market today from banking institutions that would help this consumer with their short-term liquidity needs

Senator TILLIS. Yeah. Mr. Chairman, I want to wait until you get back. I do not think I can do unanimous consent when I am the only one in the room, but I would ask unanimous consent that I have the statement from the American Bankers Association submitted for the record.

Chair WARNOCK. Without objection.

Senator TILLIS. Thank you.

Mr. Wilk, your business, Dave, do you take all comers?

Mr. WILK. Sorry. Could you repeat that? Do we take who?

Senator TILLIS. Do you take all comers? So if somebody goes to your web site, is there anything that would constrain them from getting access to your products and services?

Mr. WILK. No, there is not. As long as they can pass a basic KYC test, which we can identify that person as a—with their Social Se-

curity Number, address, and phone number, they can access our service.

Senator TILLIS. So, credit history, payment history, no factors like that weigh into it?

Mr. WILK. That is right. So as long as they can pass KYC, they are able to immediately get accepted for a Dave checking account.

Senator TILLIS. OK.

Mr. WILK. For a customer to be approved for our ExtraCash, we do not use the legacy credit system, so a customer can be approved just based on their transaction history alone. We do not look at——

Senator TILLIS. I know you mentioned that there is kind of an opt-in for a tip for those who may have taken advantage of what would be the equivalent of overdraft coverage, but how do you make money?

Mr. WILK. So we make money in several ways at the business. Starting with our checking account, we make money off of interchange. So every time somebody swipes their card, we make about 1 to 1.5 percent of that transaction.

Additionally, for our Insights product, where we help customers predict upcoming bills, like their Netflix and water and power, we charge a $1 a month subscription for that.

As far as Side Hustle, we make money from referral fees from employers when customers apply for work.

And on the ExtraCash feature itself, the customer can access that product entirely for free, but we do make money from two optional fee structures, one being tips, where customers can give us an optional fee if they enjoy the service. On average, that tip is around $4 for people that do tip us. In comparison to a $34 or $35 overdraft fee, we think that is an incredibly good deal for consumers.

Additionally, we have an expedited processing fee. So if someone wants to have the money sent to their bank account via ACH, they can have the money in their account absolutely for free. If they want the money sent to their debit card, which we use the Visa and MasterCard send rails, we do charge a small processing fee similar to a Venmo or Cash App.

Senator TILLIS. Mr. Klein, why wouldn't the bank that you mentioned that has a significant revenue stream from overdraft fees, why wouldn't that be ripe for the picking for a fintech like Dave?

Mr. KLEIN. So it is a good question. Bank accounts like this are often sticky in terms of that, particularly the cost of transitioning. As I said, imagine if you are a military family and you are deployed, right, and you are dealing with all this stuff. You have a family at home, with kids. Changing your bank account is very sticky and messy. You have a lot of automatic payments, a lot of automatic transitions. And, you have to live your life as you are working paycheck to paycheck, trying to make ends meet, and so it becomes very difficult to have that type of situation.

Senator TILLIS. But it sounds like to me in the case of the Dave platform they would not necessarily need the bank; they would just simply no longer use that service.

Mr. KLEIN. Well, I think in terms of having the direct deposits— I mean, part of the problem here is there are lots of other ways in which these overdraft fees are generated. A couple that were men-

tioned were a point-of-sale and ATM, but a different trick that is done is reordering payment flows, from biggest to smallest and the time.

You know, the way that our payment system works under this ACH system it is like a batch. It is like putting yourself in the laundry. It all goes in together and comes out at once. It is not in the order that you are done.

Now most banks are pretty good at this best practice. A recent study by the CFPB found almost 90 percent of banks and two-thirds of credit unions posted credits before debits, put the money in your account before they took it out. However, one-third of credit unions and 10 percent of banks posted some debits before credits.

So the time—once you create this time wiggle room, some institutions have the ability to reorder your transactions in a way that maximizes overdraft fees for them. Some of them are leaning deep into that product and that practice, and that is a practice that I think is problematic and unfair, and it is one that you cannot be—opting in does not really have meaning in that context when everything—when the bank is deciding to reorder your transactions.

Senator TILLIS. I am going to have to go vote now, Mr. Chairman, but I just want to get back to the concept of really understanding how the market is transitioning and really understanding the potential additional complexity and cost and threat to banking, to the banked and the unbanked, if you do not get incremental regulations right.

And if I had not seen—and I would love for you to submit for the record. A trend, it seems like the market forces and innovation are pushing things in the right direction. And it always gives me pause when Government wants to come in because when Government comes in it tends to stifle competition and stifle innovation.

So it is just like the hearing that I had in Judiciary today on interchange fees, where some want to cap them. I think that that could have—as some aspects of the Durbin amendment had—negative, unintended consequences.

So as we move forward and discuss potential policy options, we need to fully understand this and not necessarily stand in the way of competition and innovation.

Thank you, Mr. Chair.

Chair WARNOCK. Thank you, Ranking Member Tillis.

I understand that Senator Cortez Masto will come virtually.

Senator CORTEZ MASTO. I am here. Hello. Thank you, Mr. Chairman. Thank you to our panelists.

Mr. Klein, let me start with you. There are more than 200 bank and credit union accounts that meet the Bank On national account standards. Eleven of these financial institutions happen to be in Nevada. In Nevada, Bank On accounts are partly why more Nevadans have access to affordable bank accounts.

So, Mr. Klein, could you do me a favor? Can you explain how Bank On accounts have helped millions of people access the banking system?

Mr. KLEIN. Absolutely, Senator. The FDIC began a pilot program in 2012 to come up with a model for what they called a safe account, and these were accounts that had low costs, had full access to online mobile banking, debit cards, et cetera, did not charge peo-

ple for basic standard services, and did not have overdrafts. These accounts have proven incredibly popular. I think one out of every five new accounts at Citibank, for example, was one of these types of accounts.

But in order to do it, the bank has to decide and go through a process. The Bank On nonprofit picked up this mantle from the FDIC and started a certification process. And then the bank has to not just have it somewhere but have it front and center, offer it and make it clear and available to the consumer, not just somewhere hidden on a shelf. When that happens, these accounts are popular, and they are profitable for banks. They might not be as profitable as squeezing folks for overdraft fees, but they more than cover their costs.

Remember, there is a punitive nature to these overdraft fees. It is not $35 for a bank to provide a $2 cup of coffee credit that gets paid back, in PNC's case, on average, in 13 hours. Right?

So these accounts have proven so popular and successful that the American Bankers Association has called it a best practice. If that can be a best practice for industry, it ought to be mandatory. There is draft discussion language in the House to require this for all institutions over $10 billion. And I do not see why every bank in America, and credit union, who is chartered by the Federal Government and provides a Government service, cannot provide one of these low-cost, universal accounts to everyone.

Senator CORTEZ MASTO. And so, Mr. Pommerehn, let me ask you to weigh in on this. Do you see the other half of financial institutions that do not yet offer Bank On accounts doing so voluntarily?

Pommerehn. Yeah, thank you for the question, Senator. Many of our member institutions do offer Bank On accounts, and many of them offer accounts that do not carry overdraft fees whatsoever. Even, there is no opt-in process for those accounts.

I would just—it is always good to keep in mind, though, that even a normal checking account there is an opt-in process. The consumer, for point-of-sale and ATM transactions, as Mr. Klein points out, has to affirmatively opt in to those services.

So there is a need, obviously, out there for short-term liquidity options. Overdraft is just one tool in that tool box. And we encourage policymakers to explore alternatives, such as small-dollar lending, to help consumers mitigate the value—the overdraft fees that they may incur.

But banks are moving that way, as we have heard. They are innovating in this space rapidly, and they have been doing it for many years now. Huntington's 24-hour grace was put in place 11, 12 years ago. The de minimis exemptions to take care of that proverbial cup of coffee, $35 cup of coffee, had been in place for many institutions for many years now.

So the market is moving, consumers are going to institutions that offer these types of services or these mitigating variables to help them avoid overdraft, and banks continue to innovate. And I think you will see more innovation in this space as we move forward, as was pointed out, and I think overdraft revenue as a whole will be—will severely decline in years to come.

Senator CORTEZ MASTO. Yeah, I would hope so. I was listening to the conversation earlier. Any financial institution really that

survives on overdraft fees has a very cruel and, I think, troubling business model that needs to change.

But let me ask Mr. Klein on direct deposit payroll loans. Banks know that customers who enroll in direct deposit receive regular paychecks, and some banks offer customers access to their incoming paycheck 2 business days early at no cost. I am wondering if you can talk a little about why access to direct deposited payroll up to 2 business days early is a best practice.

Mr. KLEIN. Sure, Senator. You know, one of the things that struck me when I first started writing about this—I made the decision, whether it was a mistake or not, to look at some of the comments in the Facebook post from the Brookings Institution when I was writing about this, and I could not—I was stunned about the slow payment system, how many people said, "Well, that does not affect me. I have direct deposit."

People think direct deposit is instant. Far from it. If you are going to get—if you are going to see your paycheck hit your bank on Friday, the odds are that small business has already put your money—sent your money. They probably sent it on Tuesday, and that money gets held in this antiquated payment system.

Chairman Warnock made the point about small businesses. Small businesses do not like having to make payroll 2, 3 days early. Meanwhile, customers and people living paycheck to paycheck cannot afford to wait. This is particularly problematic when the first of the month falls on a Thursday and payday falls on a Friday. Again, there is no reason for this money to be sitting there. Direct deposits could occur instantly if we had a faster payment system or if we used something other than the ACH.

The Treasury Department's own payments for emergency stimulus payments that they sent through the banking system sent the information on Friday and it did not hit people's accounts till Wednesday. How are you supposed to eat and have diapers if you ran out of money over the weekend? Giving people access to their own money faster, to me, is a small-c, conservative idea.

And the direct deposit system relies on this multiday, slow ACH system where America is alone. You go to other countries in the world; it is not like this. The Bank of England put in real-time payments in 2008. In Singapore, when the Government sent the people their emergency money, it was in their account, ready to use, in an hour.

Senator CORTEZ MASTO. Thank you. Thank you again to the panelists. So appreciate the conversation.

Mr. Chairman, thank you.

Chair WARNOCK. Thank you. Thank you so very much, Senator Cortez Masto.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. Thank you to all of our witnesses today.

And I am going to pick up, Mr. Klein, right where you left off because, as you pointed out repeatedly, as I think we all know, the current system disadvantages lower-income individuals with respect to the timing of payments. And moving to a real time payment system would address a lot of that because when you are living paycheck to paycheck, and you deposit your paycheck 1 day and

it takes days to clear, and during those days you have to draw on your accounts you get, you know, hit with various fees, which is why you have been pushing, I have been pushing for a long time, to move the Federal Reserve to the FedNow system.

Senator Warren and I introduced legislation to move in that direction, and every time we have a representative from the Federal Reserve here I ask them about progress. As you know, we are hoping to roll out the FedNow system next year, and I am interested in your assessment of where we are and whether or not we will be able to hit the ground running when that happens based on your understanding of how far along the road we are.

Mr. KLEIN. Senator, I thank you for that question. I thank you for your tremendous leadership on this issue for many years. I am not sure we would be nearly as far along the road as we would, in fact, I am positive we would not, without your laser-like focus on this issue, but I am very concerned we are not there.

Look, in 2012, the Fed formed a task force called Faster Payments 2020 with a mission that we would have real-time payments in 2020. They gave themselves 8 years to do that. Now keep in mind the Bank of England decided in 2007 to get faster payments; 18 months later, they had it. That was when the first iPhone came out. The Bank of Mexico put in real time payments in 2004, the Bank of Brazil in 2005.

The Federal Reserve finally committed, after much pressure, to develop this FedNow system and said it would take them 5 years. Why? Now they say maybe we will get in four. Now we see all this talk about a central bank digital currency. Now I am not here to talk about that, and I have opinions, this or that, but what I am very concerned about is an attempt to delay FedNow to a later date while we start thinking about CBDC.

Had we had real-time payments when the Bank of England did, we would have over $100 billion less of income inequality in America through lower overdraft fees, check cashing fees, payday lending fees. I did not even include late fees in some of these other fees that are hard to do. So every day we wait costs.

Meanwhile, many of the financial institutions regulated by the Fed and the OCC rely on this overdraft, and I am concerned about some structural conflicts of interest in a system where you have a central bank regulating all payments. The Fed, with one regulation, could the first $5,000 of your check available immediately, as your legislation and Senator Warren's proposed would have done. Congress gave them that authority in the 80s, and they have sat on their hands with it until they would build their own system.

It is a structural conflict of interest for the Fed to regulate payments and operate their own system, and I am not as confident that we will be there within the next year and that when it opens it will open in a way that is meaningfully inclusive and actually moving everybody immediately.

I think industry. I think fintech solutions and other folks. There is a reason that my fellow witness from Dave is able to charge, I think, about 1.5 percent for instant payments, and Venmo and PayPal and the rest can do it; consumers demand it. And so I am worried that we are going to sit here waiting forever for the Fed to provide it.

Senator VAN HOLLEN. Well, I appreciate your frank assessment of where we are. We are going to work to light a fire even more under the Fed to get it moving because, as you say, every day that goes by without real-time payments is another day that especially lower-income folks are getting hit.

Mr. Pommerehn, it is great to have a University of Maryland/University of Baltimore law grad here. Mr. Klein has identified some of the tricks that some banks and credit unions, and I want to not paint with a broad brush necessarily. Senator Tillis is right; not all these institutions engage in some of these tricks.

But you would agree that we should phaseout the practices that he has discussed? For example, essentially, the posting of debits before credits and the practice of reordering payment flows from largest to smallest, would you agree that those practices should be phased out?

Mr. POMMEREHN. Thank you, Senator. Yeah, I would say that many banks are actually phasing out those practices, as pointed out by Mr. Klein. We are moving in that direction. We have been for many years now.

Senator VAN HOLLEN. Right. Again, I think your members have been moving in that direction, and I think that is a good thing. Do you encourage all your members to phaseout those kinds of practices which really are, in my view, trickery?

Mr. POMMEREHN. Senator, we, as a trade association, do not counsel our member institutions on what they should or should not do. We simply work with them on policy here on Capitol Hill and with the Federal regulators. But certainly I think, again, we have seen quite significant movement in that space, not just in the last year or so but from a decade past.

Senator VAN HOLLEN. Got it. Well, the sooner we get to 100 percent the better. And as you point out, we would all like to see the market incentivize these changes, but it is when it does not that action is necessary.

Thank you both and thank everybody for their testimony.

Thank you, Mr. Chairman.

Chair WARNOCK. Thank you so much, Mr. Van Hollen.

I understand that Senator Warren is on the way. In the meantime, I will ask another question.

I think there is consensus here that competition is driving down the cost of overdraft. At some banks and credit unions, we are seeing movement, but this new low-fee or no-fee approach assumes that people can choose their banking services. Not everybody actually has the same choices, the people in Wayne County, Georgia, for example. According to the FDIC, there are only five bank branches in Wayne County and all of them are in Jesup. I am from Savannah, so I know where Jesup, Georgia, is. So, over 600 square miles, five banks.

Mr. Klein, what is driving the high level of overdraft fees still charged by some banks?

Mr. KLEIN. So, Chairman Warnock, I think what we find is a small number of people are heavy overdrafters. Some banks find themselves with a small share or natural share of those customers, other banks change practices in ways that squeeze those people or not, and a small handful actively go to seek those folks because

they are much more profitable customers than slightly wealthier people that do not do heavy overdrafts.

And what you find is that people cycle in and out of the banking system on that bottom group. So if 5 to 6 percent of households are unbanked and you have another 9 percent of folks that are these heavy overdrafters, and you go and you ask the unbanked, why did you leave the system, as you pointed out in your statement, the number one reason, the system was too expensive for me. Right?

I believe that that is that churn that is going in. Some of those folks are leaving the system. Some of those folks are coming in.

In addition, I think the lack of offering products that are proper for folk. Right? You asked the question, why are there these high fees? The fees are not based on the cost to the bank. It is not $35 to the bank to provide an overdraft fee. As was briefly said in the long list, part of the purpose is to be punitive, to discourage their use. But with these heavy overdrafters, it is not discouraging their use; it is simply milking them out of money that then structurally reinforces their cycle of poverty and struggled that you referenced earlier.

And that is particularly true in communities without many banking choices, but there is a bit of an illusion of choice because, oh, you have 5,000 banks in America, you have 5,000 credit unions. Right?

In reality, the cost of transition is very high in an institution, and it is very high for consumers. If you had to change your cell phone number, would there be as much competition cell phones? Right? But you have to change all your banking and routing and other account information. Makes a big difference in terms of the structural barriers to change.

Chair WARNOCK. Thank you so very much.

Ms. Warren.

Senator WARREN. Thank you very much, Mr. Chairman, and thank you very much for holding this hearing today, very important, matters to millions of families across this country. And thank you to our witnesses for being here today.

So during the pandemic, America's banks got a lot of help from taxpayers. They were given special dispensation to overdraw their accounts at the Federal Reserve if they needed a little help. Now in return, the regulators asked the banks, please do the same thing for your customers.

So last year, I asked the CEOs of the four biggest banks, JPMorgan Chase, Wells Fargo, Bank of America, and Citi whether they had followed through and automatically waived overdraft fees during the pandemic. Not one of them raised their hand. In fact, in 2020, they collected more than $4 billion in overdraft fees from families.

So I asked them, would they return the money? And you guessed it. The CEOs had nothing to say.

But over the last few months there has been a, quote, race to the top, and some of these banks, like Citi and Capital One, eliminated overdraft fees altogether.

Mr. Klein, you are an expert on the overdraft system and banks' reliance on these fees. Three of the Nation's biggest banks—JPMorgan Chase, Bank of America, and Wells Fargo—still have

not eliminated overdraft fees. So can you give us an idea? How much money are they raking in from these fees every year?

Mr. KLEIN. Senator Warren, they are making billions. In 2019, before the pandemic, JPMorgan Chase earned over $2 billion in overdraft fees; Wells Fargo, about 1.7; and Bank of America, a bit over 1.5. Together, they earned $5.25 billion. Those figures declined, along with the entire industry, as a result of pandemic assistance authored by this Congress and the one before it. But even then, in 2021, overdraft—each of those banks were making more than a billion dollars a year in overdraft fees, and overdraft fees are basically pure profit for banks.

Senator WARREN. OK. So we got that end of it, the banking end. Over a billion dollars for each one of these giant banks.

So let us look at the other end. Who are the consumers who are shelling out the billions of dollars to these banks? Well, according to the CFPB, 80 percent of all overdraft and nonsufficient funds fees are paid not by everyone but by only about 9 percent of account holders and these families have an average balance of less than $350. According to Pew, they are also disproportionately Black and Hispanic Americans who make, on average, less than $50,000 a year. In other words, people working hard to try to make it from here to the end of the month.

So JPMorgan Chase, Bank of America, and Wells Fargo are collecting billions of dollars in overdraft fees from struggling families every year.

Mr. Klein, what would happen to these banks if they just stopped collecting overdraft fees? Would they go out of business? Would they stumble and teeter and just fall off the profitability line?

Mr. KLEIN. They would be fine, Senator. Overdraft fees are a small share of these institutions' profits. Last year, they were about 3 percent for JPMorgan, 4 percent for Bank of America, slightly higher for Wells.

My research indicates that, broadly speaking, the less overdraft was a share of bank profit the more the bank is willing to adopt changes that reduce overdraft revenues, like Citibank, who never really tried to maximize overdraft from its customers and for years managed to be highly profitable without leaning on people living paycheck to paycheck.

This one idea that industry actions alone will fix the overdraft problem is flawed. Senator, there are some entities with the apparent blessing of their regulators that are functionally not banks or credit unions, that earn 100 percent or more of their profits just on overdraft fees alone. These are not banks. These are check cashers and payday lenders with a banking charter.

Senator WARREN. Yeah. Well, you know, Chase, Bank of America, and Wells Fargo are making tens of billions of dollars in profits, and yet, they are still squeezing families on overdraft fees. If Citibank and Capital One can eliminate overdraft fees, so can Chase and B of A and Wells.

And that is why earlier today, along with Senator Booker and Representative Carolyn Maloney, we sent letters to the CEOs of JPMorgan Chase, Bank of America, and Wells Fargo, urging them to end overdraft fees, and by the way, there are 18 State attorneys general who also agree with us on this.

But we should not sit around and wait for banks to do the right thing. Congress should pass my and Senator Booker's Stop Overdraft Profiteering Act, which would crack down on exploitive overdraft fees and practices. I also want to do one more. The OCC could step in. They have the power to eliminate these fees. Instead of working for the biggest banks, it is time for Government to work on the side of working families.

So once again, thank you, Mr. Chairman, for putting this hearing together. I hope we get some action that helps the families who need it.

Chair WARNOCK. Well, thank you so much, Ms. Warren. And that is the purpose of this hearing, to shine a bright light on this issue. Glad to see some of the progress that we are seeing with some of the banks, but it is also proof positive that others could move in the right direction.

And with that, all questioning has concluded. Thank you to all of our witnesses for being with us today.

This hearing highlights how Congress is focusing on lowering costs for the American people and how important our Nation's financial institutions are in helping families and small businesses and communities to thrive. There is a difference between offering a service that will lend a hand and offering a service that will kick someone while they are down.

In March, I joined Chairman Brown in leading a letter, with our colleagues, to the largest banks in the country that have yet to make meaningful progress on alleviating overdraft fees for their customers, and I have also prepared a report that my office will be releasing soon based on their responses and responses to the CFPB's request for public input on junk fees. The report will illustrate the gap between how industry views these services and fees and how the public perceives them.

Lowering onerous fees is something I will keep pushing for through collaborating with financial institutions and, when necessary, through legislation and working with regulators to stop bad actors from taking advantage of hardworking Americans and the most vulnerable struggling families. This topic is about saving people money, creating a viable economy that works for all Americans, and ensuring hardworking families are not swindled out of a shot at financial stability.

For Senators who wish to submit questions for the record, those questions are due 1 week from today. For our witnesses, you will have 45 days to respond to any questions.

Thank you all again.

And with that, this hearing is adjourned.

[Whereupon, at 3:39 p.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF AARON KLEIN

SENIOR FELLOW IN ECONOMIC STUDIES, BROOKINGS INSTITUTION

MAY 4, 2022

Chairman Warnock, Ranking Member Tillis, thank you for holding this timely hearing examining the impacts of overdraft fees.[1] Overdraft fees, developed as a convenience service for occasional instances when a consumer ran out of funds, morphed into a cottage industry with estimates of total fees paid by consumers ranging up to more than $30 billion a year. By definition, every overdraft fee is paid by a person who has run out of money while trying to live their life. These fees, which are effectively short-term loans, can be extremely high-cost relative to the small amount of money received by the customer, short-lived in time borrowed, and carry small chance of default. As a result, overdraft fees result in nearly pure profit for the bank or credit union. No wonder one bank CEO named his yacht "Overdraft."

After decades of racking up major profits off of American families living paycheck to paycheck, many banks, including most of America's largest banks, have announced sweeping changes to their overdraft policies. These changes will sharply reduce costs for their customers. Savings will go directly to people living on the financial edge and come directly out of bank profits. The result will be a more equal and just financial system and a significant dent in the high costs of being poor. By my calculations, the combined savings for consumers from overdraft changes already announced will be approximately $5 billion a year. Even by Washington standards, that's real money.

Industry made these sweeping changes without any new legislation or new regulation. I commend these banks for their actions. They are doing the right thing for their customers, which will also reduce income inequality and, over time, reduce the number of unbanked households in America.

However, as my testimony will show, the difference in the actions taken by banks varies substantially, and some institutions' changes are more meaningful than others. Critically, a handful of banks have become dependent on overdraft for the majority—and in some instances totality—of their profit. These overdraft giants cannot structurally walk away from overdraft nor will they. Regulators have long been asleep at the switch in allowing these institutions to operate like this. New regulation is still needed on the basis of safety and soundness to address any bank or credit union that relies on overdraft for the majority of their profit.

My testimony will focus on three main points:

1. Understanding overdrafts and why some institutions are making changes.
2. Examining changes in overdraft policies to elucidate the problems and paths to solutions for families living paycheck to paycheck.
3. Additional policy solutions to address both remaining problems in overdraft and the broader root causes that have led America to be a Nation where the less money you have, the more money it costs you to deal with your money.

Understanding Overdraft

Overdraft fees are major profit centers for banks and credit unions, with estimates ranging from roughly $15 billion a year for banks alone[2] to over $30 billion a year for banks and credit unions.[3] Overdraft fee income peaked in 2019 as pandemic assistance and other Covid-related factors reduced overdraft revenue across the board for almost every institution.[4] While overdraft revenue rebounded in 2021 as pandemic assistance subsided, other changes have taken place that will likely make 2019 the highwater mark for overdraft revenue.

Among those other changes has been the entry of a growing number of financial technology firms (fintechs) partnering with banks to provide basic banking services to consumers. Many of these products do not allow for traditional overdraft fees. The

[1] The views expressed are my own and do not necessarily reflect the views of other staff members, officers, or Trustees of the Brookings Institution.

[2] Consumer Financial Protection Bureau. "CFPB Research Shows Banks' Deep Dependence on Overdraft Fees". December 1, 2021. *https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/*

[3] Nova, Annie. "Banks Will Collect More Than $30 Billion in Overdraft Fees This Year. Here's How To Avoid Them". CNBC, December 1, 2020. *https://www.cnbc.com/2020/12/01/banks-will-get-30b-in-overdraft-fees-this-year-heres-how-to-avoid-them-.html*

[4] Fox, Zach, and Ronamil Portes. "Overdraft Fees Jump 40 Percent YOY but Still Headed Lower From 2019 Levels". S&P Global, August 25, 2021. *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/overdraft-fees-jump-40-yoy-but-still-headed-lower-from-2019-levels-66207671*

lack of overdraft fees is often figured prominently in their marketing, a sign that consumers would be attracted to non-overdraft banking.[5] The growth of fintechs probably played a role in motivating some banks to change their overdraft policy.

The key to understanding overdraft is that a small number of customers account for the vast majority of overdrafts: 80 percent of overdraft fees come from 9 percent of account holders. The same data shows that one out of every 12 banked customers had ten or more overdrafts a year, paying on average $380 a year in overdraft fees.[6] For a person earning $38,000 a year, that is 1 percent of their annual income spent in overdraft fees alone!

Heavy overdrafters are highly profitable customers, often producing more profit than customers with more money in their account who manage to not overdraw. For some banks, this makes them a desirable customer set, so much so that a small number of banks have decided to specialize in attracting these customers and maximizing their overdrafts, a point I will get to later in my testimony.

Another note on heavy overdrafters involves debit cards and regulation. Heavy overdrafters are likely to be heavy debit card users, as payment form and income are highly correlated.[7] As a result of the compromise worked out during debate and passage of the Durbin Amendment to the Dodd-Frank Act in 2010, small banks were essentially given the ability to have a higher interchange fee on certain debit card transactions relative to larger banks.[8] [9] When a fintech partners with a small bank, they are able to earn the higher interchange fee. This partnership is structurally able to generate more revenue off debit card users than larger banks for the same activity. Thus, fintechs can make more profit from the regular payments made by overdraft-prone customers than larger banks.

A final point on heavy overdrafters: for them, basic banking is expensive. The result is that many leave the banking system. As a recent Consumer Finance Protection Bureau (CFPB) note was titled: "Overdraft Fees Can Price People Out of Banking".[10] While being unbanked is costly, there are times when nonbank services are actually cheaper than banks. In fact, the high costs of banking is the number one reason why people leave the banking system according to the Federal Deposit Insurance Corporation (FDIC).[11] Fixing the overdraft problem is one of the most important things that can be done to help address problems of the un- and under-banked.

Overdraft fees vary substantially between banks. Banks have structured their overdraft products very differently. As a result, overdraft revenue varies substantially among banks, including among the largest banks.[12] To compare banks by overdraft revenue, I analyze their overdraft revenue per consumer nonretirement deposit account.[13] This helps control for differences between banks by size while focusing on their consumer account footprint. It elucidates the substantial divergence in overdraft revenue, as some banks generate overdraft of more than seven times other banks. It is hard to imagine that among the Nation's largest banks the variation in their share of heavy overdrafters is this drastic. Hence, there must be other practices and products offered by these banks that allow some to generate so much more overdraft revenue per customer than others. These include how reordering pay-

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[5] Chime. "Overdraft With No Fees". *https://www.chime.com/spotme/*

[6] Bakker, Trevor, Nicole Kelly, Jesse Leary, and Eva Nagypal. "Data Point: Checking Account Overdraft". Consumer Financial Protection Bureau, July 2014. *https://files.consumerfinance.gov/f/201407-cfpb-report-data-point-overdrafts.pdf*

[7] Klein, Aaron. "How Credit Card Companies Reward the Rich and Punish the Rest of Us". *L.A. Times*, December 20, 2019. *https://www.latimes.com/opinion/story/2019-12-20/opinion-how-credit-card-companies-reward-the-rich-and-punish-the-rest-of-us*

[8] 111th Congress. 15 U.S.C. §1693o-2, "Reasonable Fees and Rules for Payment Card Transactions".

[9] Hopkins, Cheyenne. "Tester Touts Bill To Delay Interchange Fee Limits". *American Banker*, April 14, 2011. *https://www.americanbanker.com/news/tester-touts-bill-to-delay-interchange-fee-limits*

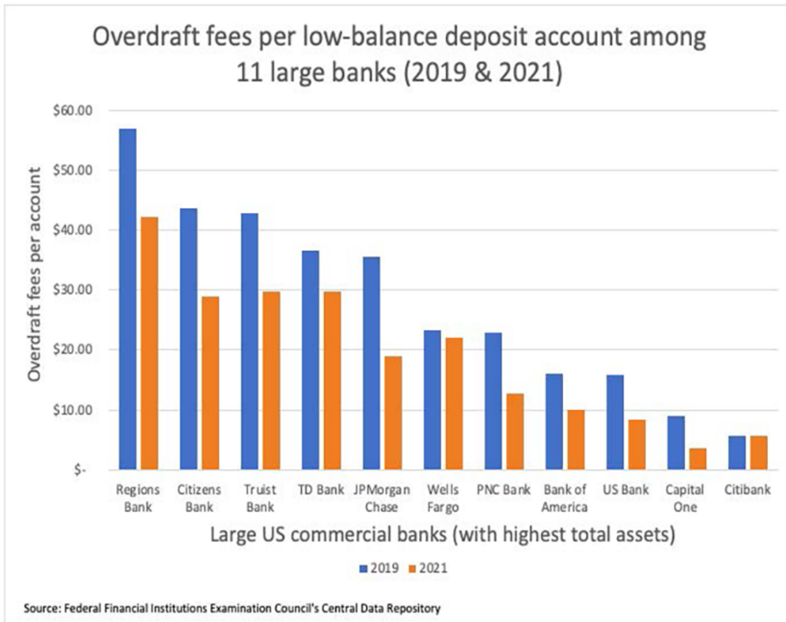
[10] Valenti, Joe. "Overdraft Fees Can Price People Out of Banking". *Consumer Finance*, March 30, 2022. *https://www.consumerfinance.gov/about-us/blog/overdraft-fees-can-price-people-out-of-banking/*

[11] Kutzbach, Mark, Alicia Lloro, Jeffrey Weinstein, and Karyen Chu. "How America Banks: Household Use of Banking and Financial Services". Federal Deposit Insurance Corporation, October 2020. *https://www.fdic.gov/analysis/household-survey/2019execsum.pdf*

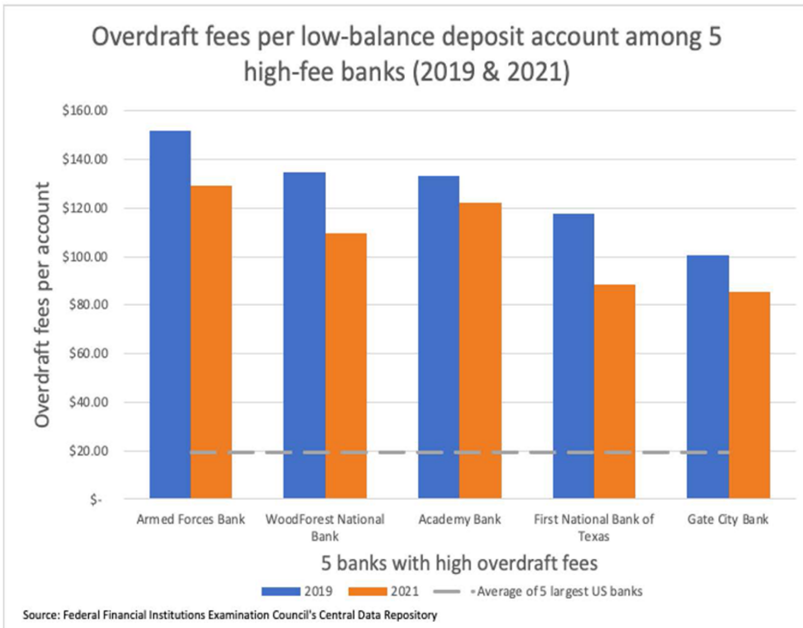
[12] Baker, Todd H., and Corey Stone. "Making Outcomes Matter: An Immodest Proposal for a New Consumer Financial Regulatory Paradigm". SSRN, May 21, 2020. *https://papers.ssrn.com/sol3/papers.cfm?abstract-id=3607308*

[13] Author's calculation using FFEIC data. While FFEIC data is governmental data filed by banks there may be some banks that have certain types of consumer nonretirement deposit accounts that are structurally different and less likely to overdraft. Note that Truist's merger in late 2019 required some additional calculations.

ments by size, posting debits before credits, and whether to allow overdrafts in certain instances like at ATMs.



A small number of small banks are overdraft giants. On a per customer basis, a handful of smaller banks generate overdraft revenue dwarfing the largest banks. These banks target heavy overdraft customers and seek to maximize revenue from them. For example, Woodforest branch in Atlanta is located in the Walmart Supercenter on Gresham Road, SE, while Armed Services Bank targets customers located primarily on military bases such as its operations on Moody Air Force Base in Georgia. Compare the overdraft revenue per customer these banks generate: often more than $100 per account each year, more than five times the average of America's five largest banks. Because their overdraft revenue per customer is higher they account for a disproportionate amount of total overdraft. Woodforest National Bank actually generates more overdraft revenue per year than Citibank.



These banks have no business model besides overdraft. First National Bank of Texas has made more than 100 percent of its profit on overdraft in each of the last 7 years (that's as long as overdraft data have been separately reported). For Woodforest and Gate City, that has been true in six of the last seven. Armed Forces Bank has made more than 75 percent of its profit on overdraft for each of the last 7 years (and over 100 percent for three of the seven). Academy Bank made more than 100 percent of its profit in overdraft fees for 4 straight years from 2017–2020. I group Armed Forces and Academy Bank together because they are part of the same holding company: Dickenson Financial Company. This holding company's strategy appears to be based on overdraft. The Federal Reserve regulates that holding company, while the Office of the Comptroller of the Currency (OCC) regulates these banks, which are nationally chartered banks. There may be more overdraft giants among the banks regulated by the FDIC and National Credit Union Administration (NCUA), as banks under $1 billion and all credit unions are exempt from publicly disclosing their overdraft revenue. Regulators have been asleep at the switch in allowing these banks to operate in what are clearly unsafe and unsound business models, as they have been losing money every year on all other aspects of banking other than overdraft.

Shining the spotlight. The divergence in bank practices has gotten the attention of policymakers, media, and bank executives. Members of Congress, including several on this Committee, publicly engaged with bank CEOs,[14] regulators,[15] and the media,[16] raising questions about outlier banks. Academics, consumer advocacy groups, and reporters began digging in. This public pressure is part of the reason, I believe, why some banks have decided the overdraft business is simply not worth it. As some institutions began making pro-consumer changes, the pressure increased for others. The industry started to move. As Acting Comptroller Hsu put it in a

[14] Bloomberg. "JPMorgan's Dimon Clashes With Warren Over Overdraft Fees". May 26, 2021. *https://www.bloomberg.com/news/videos/2021-05-26/jpmorgan-s-dimon-clashes-with-warren-over-overdraft-fees-video*

[15] Office of the Comptroller of the Currency. "Acting Comptroller Michael J. Hsu Remarks Before the Consumer Federation of America's 34th Annual Financial Services Conference". December 8, 2021. *https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-129.pdf*

[16] CNBC Television. "Sen. Elizabeth Warren on JPMorgan CEO Jamie Dimon's Testimony." YouTube, May 26, 2021. *https://www.youtube.com/watch?v=DT4ojj-spoY&ab-channel=CNBCTelevision*

speech a few months ago before the American Bankers Association, "You don't want to be the last bank that still has a traditional overdraft program." [17] Words like that from regulators have meaning, even if they do not yet have a regulation behind them.

Overdraft Changes

Most of the Nation's largest banks and many smaller ones have announced changes in their overdraft policy. Several eliminated the product all together. Others instituted a set of changes designed to reduce the number of overdrafts their customers experience. How banks are reducing overdrafts shed significant light on the factors that drove overdraft in the first place. The changes taken can be categorized into four buckets. Each bucket is a type of change that highlights a different aspect of the overdraft problem and how it can be solved. The four buckets are:

1. Reducing fees
2. Changing time
3. Providing small dollar liquidity in different forms
4. Consumer empowerment

Before turning to each bucket, several top line observations. Generally speaking, the less a bank relied on overdraft for revenue the more likely they were to eliminate the product or cut fees by the largest amount. Citibank and Capital One eliminated the product entirely. While Bank of America did not eliminate overdraft, it pledged to cut total overdraft revenue by 97 percent (although from a different baseline). [18] On the other end the changes announced by Regions and Citizens Banks will reduce their overdraft revenue by only 23 and 28 percent respectively, despite each starting from a higher base. [19]

Overall savings from this subset of fourteen banks that have made changed overdraft policies is around $5 billion a year. [20] If these savings were distributed evenly across the country, on a per capita basis, a State like Georgia would expect savings of $162 million a year. This estimate is derived from various bank public statements regarding their expectations of reduced overdraft fees coupled with estimates based on announced policy changes for banks where I was unable to find public statements regarding expected revenue lost. It includes the largest banks plus several others who made announcements and for which I was able to find data. [21]

The savings are estimated from the 2019 base-year, given the pandemic-related changes in overdraft revenue described earlier that began in 2020, coupled with the reality that some banks who were early announcers of overdraft policies have already seen revenue changes. This estimate is more inclusive of than the CFPB's estimate of the savings from banks eliminating nonsufficient funds fees (NSF) which they estimated will save consumers $1 billion alone. [22] It also includes institutions that have made announcements since an earlier estimate by Pew which found potential savings of $2 billion a year based on changes from only the five largest banks. [23] This estimate does not include the potential offsetting costs borne by con-

[17] *American Banking Journal.* "OCC's Hsu: 'You Don't Want To Be Last' To Offer Traditional Overdraft Programs". March 9, 2022. *https://bankingjournal.aba.com/2022/03/occs-hsu-you-dont-want-to-be-last-to-offer-traditional-overdraft-programs/*

[18] Bank of America. "Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees". January 11, 2022. *https://newsroom.bankofamerica.com/content/newsroom/press-releases/2022/01/bank-of-america-announces-sweeping-changes-to-overdraft-services.html*

[19] Kline, Allissa. "Truist Joins Industry's Pivot Away From Overdraft Fees". *American Banker*, January 18, 2022. *https://www.americanbanker.com/news/truist-joins-industrys-pivot-away-from-overdraft-fees*

[20] The banks included in this analysis are: JPMC, BoA, Wells Fargo, Citibank, USBank, Truist, PNC, Capital One, USAA, TD Bank, Regions, Citizens, Ally, and Frost. All sources are cited in the author's calculations.

[21] Sources for the overdraft revenue reductions include conversations with individual banks and the following publications: *https://www.americanbanker.com/news/truist-joins-industrys-pivot-away-from-overdraft-fees*; *https://www.capitalone.com/about/newsroom/eliminating-overdraft-fees/https://seekingalpha.com/news/3789183-regions-bank-is-the-latest-to-cut-overdraft-fees-to-keep-attract-customers*

[22] Borne, Rebecca, and Ashwin Vasan. "Consumers on Course To Save $1 Billion in NSF Fees Annually, But Some Banks Continue To Charge These Fees". Consumer Financial Protection Bureau, April 13, 2022. *https://www.consumerfinance.gov/about-us/blog/consumers-on-course-to-save-one-billion-in-nsf-fees-annually-but-some-banks-continue-to-charge-them/#:text=In%20recent%20months%2C%20a%20number%savings%20of%20about%20%241%20billion*

[23] Horowitz, Alex, and Linlin Liang. "America's Largest Banks Make Major Overdraft Changes That Will Help Consumers". Pew Research, February 8, 2022. *https://*

sumers who end up in small dollar loans instead of being charged overdrafts. Those interest costs will offset some of these savings and should be monitored as these new small dollar loan alternatives are rolled out.

For the banks examined, policy changes already announced average out to a reduction of just below 60 percent of total 2019 overdraft revenue, although they vary significantly between financial institutions. Several institutions that have made relatively small changes to reduce overdraft fees will appear even larger outliers relative to their peer group in coming years. Policymakers, regulators, and the media should continue to carefully analyze overdraft policies as not all changes will have the same impact.

If every bank and credit union made changes along this industry average, savings for consumers would exceed $17 billion, based on the Moebs estimate of $30 billion in total overdraft charges in 2019. However, as noted above, that is unlikely absent regulatory or legal changes given how dependent some institutions are on overdraft for their business. Thus, while industry actions to date constitute a major win for many working families—after all, the majority of people in America have an account with a bank that has changed its policies—much more can be done.

Reducing Fees

Among actions banks and credit unions can take to benefit consumers, lowering the costs of overdraft is the most straightforward and impactful. Overdrafts had generally been priced at about $35 each, with institutions setting a maximum number of daily overdrafts (often between four and eight). Many institutions charged a nonsufficient funds fee (NSF) when certain payments could not be covered by the funds in a consumer's account. NSF fees tended to be around the same size as overdraft fees.

Changes observed: Most of the largest financial institutions have eliminated NSF fees entirely.[24] Some institutions have reduced the $35 fee; notably Bank of America lowered it to $10, M&T to $15. This has eliminated part of the punitive penalty aspect of the fee and is one reason why Bank of America expects such a substantial decline in total overdraft revenue. Some have also reduced the maximum number of overdraft fees charged per day.

These changes are straightforward and will reduce the cost borne by consumers. Elimination of NSF fees is particularly important as these were sometimes a double whammy, hitting a consumer on top of the overdraft fee, making the true cost of a negative balance event greater than $35.

Insight revealed: Overdraft fees do not reflect the cost to the financial institution of providing overdraft coverage. The fee was often designed to have a punitive element to discourage consumers from going negative.[25] Charging penalty fees for overdrafts may have been designed at one point to reduce frequency, but given the illiquid nature of the customer at the moment they run out of money, it became a way to generate more profit for a financial institution. Given the high cost of alternative small dollar credit and the consumers' frequent lack of awareness that they were even overdrafting, the fee was able to stay quite high.

Changing Time

Overdraft is as much or more about running out of time than out of money. The reason people go negative in their bank account temporarily has a lot to do with the mismatch in time between when they have access to their money and when their payments are debited from their account. They are often minutes, hours, or days away from having the money necessary to cover the overage. In addition, some customers have positive balances able to cover the cost when they make a purchase, but because of the time delay in settlement, other payments have been processed before this purchase. This results in a "positive when made, negative when settled" scenario in which a consumer was shown that they had the money in their account when the payment began but ended up being charged an overdraft.

These problems are exacerbated by America's antiquated payment system, which still runs on technology that is decades old. In this system, payments are often credited and debited in batches rather than individually when they occur. A batch sys-

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www.pewtrusts.org/en/research-and-analysis/articles/2022/02/08/americas-largest-banks-make-major-overdraft-changes-that-will-help-consumers

[24] Horowitz, Alex, and Linlin Liang. "America's Largest Banks Make Major Overdraft Changes That Will Help Consumers". Pew Research, February 8, 2022. *https://www.pewtrusts.org/en/research-and-analysis/articles/2022/02/08/americas-largest-banks-make-major-overdraft-changes-that-will-help-consumers*

[25] United States Senate Committee on Banking, Housing and Urban Affairs. "Testimony of Michael Calhoun, Center for Responsible Lending". November 17, 2009. *https://www.banking.senate.gov/imo/media/doc/CalhounTestimony111709.pdf*

tem is analogous to a washing machine in which all the clothes go in together, regardless of when they were soiled, and come out clean at the same time. The person doing the laundry then decides when to fold and return the clean clothes, much like the bank has some discretion on which order to post the various debits and credits that come through the payment cycle.

Changes observed: Many banks have created grace periods where consumers who cure an overdraft within 24 to 48 hours or more are not charged a fee (PNC, Wells Fargo). In addition, many banks have moved up consumers' payday, crediting accounts with direct deposit up to 2 days earlier (Capital One, Regions). This is a valuable service to customers because direct deposit is not instant. Typically, a direct deposit that is withdrawn from a business on Tuesday does not become available to the worker until Friday. Banks with direct deposit relationships often know the amount of money their customer will receive and are able to provide access to those funds earlier. Some banks have also eliminated any overdraft fees incurred if a charge was made when the account had funds but settled negative (JPMC).

Insight revealed: Time is money. The provision of extra time has had a substantial impact. PNC, which was among the first banks to change overdraft fees, has been able to collect some data from their changes which they term "Low Cash Mode." 63 percent of PNC customers who end the day with a negative balance are able to fix the problem and avoid an overdraft.[26] The average time to cure is only 13 hours, evidence that the majority of their customers' problems are very short-term mismatches. From PNC's experience, 75 percent of reduction in fees was the result of extra time and the change on the limit on total overdrafts. The remaining 25 percent of savings came from the elimination of NSF fees.

Overdraft fees are driven in large part by short temporal mismatches in income flows. The provision of short time windows to cure is very impactful. This helps explain the popularity of early wage access and other faster payment options spreading through the banking and fintech systems. It also makes clear the incredibly high cost of our Nation's slow payment system born by American families living paycheck to paycheck. The failure of the Federal Reserve to speed up our payment system has taken billions out of the pockets of working families and stuffed it in the bottom line of banks, credit unions, check cashers, and payday lenders.[27] Faster payments ought to be among our top priorities.

Small Dollar Liquidity in Different Forms

Economically, overdraft is a form of small dollar credit. Charging a fixed price instead of an interest rate does not change that basic fact. Legal and regulatory structures deemed overdraft a fee instead of a loan, avoiding a set of legal requirements like Truth in Lending that requires disclosures, including the annual percentage interest rate (APR). APR's for overdrafts may or may not be useful concepts, but they would appear astronomical for covering a tiny overdraft, as one story reports $100 overdraft fees for covering an overdraft of 2 cents.[28]

The differentiation between a fee and a loan is important for legal purposes, but economically the concept of a financial institution providing money to a consumer and in exchange being repaid in the future is the same. This is the provision of credit. How that credit is priced can be spliced in different forms. In the case of overdraft, which is almost always relatively small dollar amounts paid back quickly, a representation of costs over the time horizon of a year will would be equivalent to mammoth APR rates.

Changes Observed: Most banks making changes in policies have increased the amount a consumer can go negative without incurring a fee. Many have raised their limits from $5 to $50 (US Bank, Huntington, TD, and JPMC) while some have gone as high as $100 (Truist and Frost Bank).

Another common change has been automatically converting negative balances into installment loans rather than charging a fee. These loans typically have a fixed charge for the amount borrowed. US Bank started a similar product (Simple Loan) earlier that now charges $6 per $100 borrowed. The loans typically last a few months and are paid back in even, amortizing payments. Institutions typically make repayment automatic but say they will not take such payment if it then causes a new overdraft.

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[26] Data provided to the author, available upon request.

[27] Klein, Aaron. "Why Don't Checks Clear Instantly? Ask the Fed". *Politico*, September 28, 2016. *https://www.politico.com/agenda/story/2016/09/financial-technology-payment-transactions-federal-reserve-000209/*

[28] Lieber, Dave. "Why Are Some Big Banks Getting Rid of Bounced-and-Check and Overdraft Fees?" *The Dallas Morning News*, February 17, 2022. *https://www.dallasnews.com/news/watchdog/2022/02/17/why-are-some-big-banks-getting-rid-of-bounced-check-and-overdraft-fees/*

Insight Revealed: Heavy overdrafters go negative many times throughout the year. Solutions require standing facilities of small dollar credit that meet their needs. Increasing the "grace zone" of negative balances without any costs is a major win for consumers. It also recognizes the reality that for people living near the zero lower balance of their bank account it can be impossible to know exactly how much money you have in your account and when your debits and credits will clear.

Changing from a fee-per-transaction when a customer's balance is negative into one loan where costs are based on amount borrowed, not number of transactions, is another win for consumers. Frankly, it may be a more fair product for the lender as well, as the costs/risks of default are related to the total amount, not the number of transactions.

Simple fees based on amount borrowed are easier to understand and consider for consumers. Separating the cost from the time horizon of the loan is also different from traditional loans with fixed interest rates on outstanding balances. Fees on the order of 5 percent of amount borrowed are substantially lower than most alternatives available to heavy overdrafters for small dollar credit. However, fees on the order of 10 percent or higher can reach high costs if the funds are repaid quickly. For example, $10 to borrow $100 that is paid back over 6 weeks approaches a 100 percent APR.

Total savings to consumers from changes to overdraft fees may be somewhat offset by interest and other costs of small dollar lending. No-cost temporary negative balances are different than interest-bearing loans. Both can be beneficial for consumers, but a full accounting of total savings from overdraft fee changes should include the corresponding costs associated with small dollar credit products that are being rolled out as alternatives to overdraft.

Consumer Empowerment

People do not know how much money is in their bank account or when exactly payments are being made, and even if they do they may lack the ability to stop automatic payments. Providing consumers increased knowledge of their situation and the ability to decide whether to stop or delay an automatic payment would empower consumers to decide whether the "overdraft was worth it."

Changes observed: Many banks have developed sophisticated systems designed to alert consumers of low balances and provide the ability to delay or stop payments (PNC, TD). Some of these systems provide proactive alerts to customers when their balance reaches a threshold ("$50 left in your account") while others indicate an automatic payment is coming that would create an overdraft. Consumers can then use this information to decide how to manage their finances and potentially avoid an overdraft.

Insight revealed: Knowledge is power. Consumers should know their bank balance and have the ability to decide whether an overdraft fee is worth the consequences of not making the automatic payment. However, cancelling an automatic payment may itself result in fees and charges from the other entity (late fees, NSF fees for attempting to get paid, delinquency notifications for credit reports, etc.). Banks making changes to their policies cannot be responsible for how the other party will respond. Consumers may not know that either.

While consumer empowerment sounds good, it is not as impactful. PNC estimates that only about 1 percent of payments were cancelled or delayed by customers receiving this alert. This may be evidence that customers want these payments to move forward regardless of overdraft consequences or that they know they will have enough money to cover the payment given that PNC's new product allows extra time to cure the overdraft. It is hard to know how many of the consumer alerts sent resulted in changed behavior without a complicated control group-style experiment.

It is hard to argue against providing consumers more information. However, information without the ability to fix a problem is often insufficient. The problem people living on the financial edge face with overdraft is more likely a combination of temporal mismatches of money and the high cost of small dollar credit than it is about knowing that they are near the edge. Data from the Financial Diaries Project and others indicate that people living paycheck to paycheck may be more likely to budget and be aware of their finances than those who are comfortably upper middle class.[29] However, when you do not know the exact moment your paycheck will hit your bank account or when a payment will be taken out it is impossible to budget or plan in a way to avoid fees.

[29] Morduch, Jonathan, and Rachel Schneider. "The Financial Diaries: How American Families Cope in a World of Uncertainty". Princeton University Press, 2019.

Policy Solutions

Many banks have made great strides to reduce overdraft fees, some more impactful than others. These banks' excellent decisions do not eliminate the need for structural policy changes. Here are five policy changes still needed to address ongoing overdraft problems that harm working families.

1. *Stopping overdraft giants with safety and soundness regulation.* A small number of banks and credit unions depend on overdrafts for a majority, or in a few instances, totality of their profits. That regulators consider it safe and sound for banks and credit unions to base their business model on overdraft, a product charged only to their most financially vulnerable customers, is a dereliction of duty. Regulators should immediately revise their rules. Any institution that relies on overdraft fees for a majority of their profits for multiple consecutive years should be given failing regulatory grades, a position the *Washington Post* editorial board has echoed.

2. *Credit unions should disclose overdraft data just like banks.* Currently all banks over $1 billion in size must file information in their call reports listing various consumer fees, including overdraft fees.[30] These items in Schedule RI, line 15, form the basis of the data I and others have used to highlight trends in industry, identify troubling practices and overdraft dependent institutions, and encourage the banking industry to reform. Credit unions are exempt from this requirement. As such, even the Nation's largest credit unions with tens of billions in assets do not file this information publicly. No one knows which credit unions are overdraft giants or are engaged in practices harming their customers, although the data described above and a few lawsuits have revealed there are problems.[31] Credit unions should report this data publicly, just like banks of similar size.

3. *Real-time payments.* As Treasury Secretary Yellen recently stated, America's slow payment system "contributes to the use of high-cost check cashers or 'pay day' lenders to get their money in time to pay their bills. Some are forced to draw against already low balances and are charged overdraft fees."[32] She was right to draw this link. My research, using FDIC data, makes clear that 70 percent of people using check cashers have bank accounts.[33] The problem Americans face is that the check takes too darn long to clear!

Voluntary decisions by some institutions to offer new programs—including faster access to certain types of payments (generally direct deposit wages) and 24 to 48 hours to cure negative balances—and a growing industry providing early wage access have all helped millions of American families avoid expensive overdrafts and other fees. That some banks and fintechs help their customers with these services only underscores the importance and power of broader payments reform. If a subset of banks moving a subset of payments faster can result in billions of dollars saved by families living paycheck to paycheck, consider the impact of a full transition to real-time payments.

The solution is real-time payments. The Federal Reserve could solve this problem today using the regulatory authority given to it under the Expedited Funds Availability Act.[34] But the Fed has not moved even though Congress was explicit in requiring that the Fed "shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible". Absent Fed action, legislation is needed. Previously proposed legislation introduced in the Senate by two leading Members of this Committee, Senators Van Hollen and Warren would solve this problem.[35]

If Congress wants to address inequality, the most impactful change I can think of that does not raise taxes or Government spending would be to require immediate posting of all deposits under $5,000 by all banks. Make this happen and save American families billions in overdrafts, check cashing fees, payday lending fees, late fees, and other problems caused by our slow payment system.

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[30] Federal Financial Institutions Examination Council. "FFIEC 031 and FFIEC 041 Call Report". December 29, 2014. *https://www.ffiec.gov/pdf/ffiec-forms/FFIEC031-FFIEC041-20141229-fi-draft.pdf*

[31] Tompor, Susan. "2 Big Michigan Credit Unions Hit With Lawsuits Regarding Overdraft Policies". *Detroit Free Press*, September 17, 2017. *https://www.freep.com/story/money/personal-finance/susan-tompor/2017/09/17/overdraft-fees-class-action-credit-unions/401149001/*

[32] United States Department of the Treasury. "Remarks from Secretary of the Treasury Janet L. Yellen on Digital Assets", April 7, 2022. *https://home.treasury.gov/news/press-releases/jy0706*

[33] Klein, Aaron. "Can Fintech Improve Health?" The Brookings Institution, September, 2021. *https://www.brookings.edu/research/can-fintech-improve-health/*

[34] Klein, Aaron. Open letter to Ann Misback, Secretary of the Board of Governors of the Federal Reserve System. The Federal Reserve, December 14, 2018. *https://www.federalreserve.gov/SECRS/2018/December/20181221/OP-1625/OP-1625-121418-133277-428769914666-1.pdf*

[35] 116th Congress. Payment Modernization Act of 2019.

4. *Smarter payments regulation.* A series of tricks allow some banks and credit unions to increase overdraft revenue in part by taking advantage of the slow payment system. Two of these can be ended through joint regulation: posting debits before credits and reordering payment flows from largest to smallest. When payments come in a batch, which is common in our current payment system, the financial institution working with its core processor has some discretion in how it posts payments. The best practice for the consumer would be to post all of their credits first and then start debiting their account. A recent study by the CFPB found that almost 90 percent of banks and two-thirds of credit unions did this.[36] However, that left one-third of credit unions and 10 percent of banks posting some debits before credits, a practice that would result in more consumers overdrafting. This should be stopped.

The same study found that while nearly two-thirds of credit unions ordered the credits chronologically, only 22 percent of banks did. However, larger banks were more likely to order chronologically, with 46 percent banks over $2 billion in size doing so. The study found a concerning 40 percent of banks in the sample reordered from largest payment to smallest, a trick that would result in more overdrafts. Less than 1 percent of credit unions did this trick. To be fair, 44 percent of banks and almost 10 percent of credit unions reordered from smallest to largest, which should minimize overdrafts. Many financial institutions are doing the right things and should be acknowledged as such. Regulation is still needed as there are also many institutions doing the wrong thing. Hopefully institutions who are doing the right thing by their customers would be supportive of their best practices being mandated across the industry.

5. *Universal Bank-On-style accounts.* All financial institutions should be required to offer a no overdraft, low-cost, basic bank account.[37] These accounts have proven to be popular when properly offered and marketed (see Citibank reporting one in five new customers opening one) and can be done in a way that is profitable for the financial institution. The American Bankers Association calls it a best practice for all banks to offer this type of account. This best practice should be mandated for all banks and credit unions. Draft legislation proposed in the House would do so for all banks and credit unions above $10 billion and this legislation would make a major positive difference in addressing the problems of un- and under-banked Americans.[38] It does so with no additional Government spending or costs imposed on financial institutions, many of which already offer these accounts. Given the importance of small banks and credit unions in reaching all Americans, I think all financial institutions should be required to offer these accounts. After all, all banks and credit unions are chartered by the Government and have a duty to serve their communities. Providing a basic, low-cost account that is accessible to all community members should be a part of that obligation.

Universal accounts expand access to the financial system. The number one reason why people are unbanked is the high cost of basic bank accounts. Approximately half of people without bank accounts report having had an account in the past, highlighting that people leaving the banking system are driven by the high cost of accounts. Requiring no-overdraft accounts will help better meet the needs of lower-income consumers.

Conclusion

America's largest banks and others around the world have made many sweeping changes to their products that will substantially reduce usage of overdrafts and overall cost of banking for consumers. These changes will likely save American consumers $5 billion a year, putting money directly in the hands of people who are living on the financial edge. The banks and credit unions who have made these changes should be commended and more should follow suit. It is not easy for a company to change in a way that reduces its immediate profits but improves the lives of its customers. This behavior should be rewarded.

The less a bank depends on overdraft revenue the more likely it is to give it up. A handful of banks and credit unions operate on business models entirely dependent

[36] Kelly, Nicole, and Eva Nagypal. "Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors". Consumer Financial Protection Bureau, December 2021. *https://files.consumerfinance.gov/f/documents/cfpb-overdraft-core-processors-report-2021-12.pdf*

[37] Klein, Aaron, and Myrto Karaflos. "Universal Bank Accounts Necessary for Families To Bank on Child Tax Credit". The Brookings Institution. April 29, 2021. *https://www.brookings.edu/opinions/universal-bank-accounts-necessary-for-families-to-bank-on-child-tax-credit/*

[38] United States House of Representatives. "Expanding Access to Affordable Bank Accounts Act". March 28, 2022. *https://financialservices.house.gov/uploadedfiles/033022—bills-117pih-expandingaccesstoaffordable-u1.pdf*

on overdraft revenue for their viability. Financial regulators must no longer tolerate this. They should never have tolerated it in the first place. The market has moved; regulators need to adapt.

The explosive growth and popularity of overdraft as a product reveals deeper structural problems with America's basic banking system. Slow payments, limited options for small dollar liquidity, and fees designed to be punitive rather than in accordance with actual costs are core reasons why overdraft became so widely used. These problems drive people out of the banking system and take billions from working families living paycheck to paycheck.

The positive changes by banks on overdraft fees are a step in the right direction. But they do not address the underlying problems. Congress has the ability to fix many of these problems and deliver a financial system that works better for working people. Critically, many of these solutions, like real time payments, do not require raising taxes or new Government spending or new programs. That a person ought to have access to their own money immediately should be a bipartisan ideal.

I appreciate the opportunity to testify before the Committee and look forward to answering your questions.

PREPARED STATEMENT OF JASON WILK

FOUNDER AND CHIEF EXECUTIVE OFFICER, DAVE

MAY 4, 2022

Good afternoon, Chair Warnock, Ranking Member Tillis, and distinguished Members of the Subcommittee. Thank you for inviting me to participate in today's hearing.

The topic of the hearing aligns closely with the story of Dave. First and foremost, Dave is a technology company building financial solutions to serve everyday Americans and working families who are struggling with some or all aspects of their financial lives.

Dave is a powerful app designed to unlock fair financial services for the 170 million Americans who need it most, the financially vulnerable and the financially coping. Our mission was and is to build a superior banking solution for anyone living paycheck to paycheck.

By estimates, there are 35 million people who are financially vulnerable, struggling with every aspect of their financial life. These are individuals who overdraft 10 to 20 times per year, are reliant on single-pay credit, and need help building credit and finding new work opportunities. [1]

Additionally, there are approximately 131 million Americans who are financially coping, struggling with some but not all aspects of their financial life. This group is overdrafting several times per year, needs help building credit, and needs access to affordable short and long-term credit, savings and investing advice. [2]

Our goal, in 2017, was to disrupt overdraft, a proven pain point for the financially vulnerable and the financially coping. Americans pay more than $30 billion annually in overdraft fees to traditional banks, with the typical transactions causing overdrafts being those to buy gas and groceries. [3] I myself was a victim of significant amounts of overdraft fees when I was in college and following school—especially with my second business where my initial salary was capped at $30,000 a year, living in San Francisco and having to travel back to Los Angeles. As you can imagine, that's a challenging salary to live off of and I was consistently hit with high overdraft fees while living on couches. And if it was happening to me—as somebody who grew up in a middle class family—then I can only imagine the impacts as you move down the income scale, especially moving into predominantly minority and lower income communities.

Against this backdrop, we started by building a simple app allowing customers to link their existing bank account to our financial insight tool to help customers understand what bills are coming up that could lead to an overdraft in their bank account. This service is increasingly useful in a world with so much tied to auto pay and direct debit, which makes it difficult to keep track of which bills could cause

[1] Financial Health Network's 2021 Financial Health Pulse Report.
[2] Ibid.
[3] Tara Siegel Bernard. 22 June 2021. "Banks Slowly Offer Alternatives to Overdraft Fees, a Bane of Struggling Spenders", *New York Times.*

us to go negative. With our "insights," through a little head's up, customers had the ability to prevent a water, power, or Netflix bill triggering a $34 overdraft fee.[4]

We realized early on—and also based on my own personal experience—that consumers are primarily using overdraft knowingly, as a form of overpriced short-term credit. I relied on overdraft to fill my gas tank. I relied on overdraft to buy groceries. I did not see a payday loan or a high interest credit card as a viable option. I also recognized that I only really needed $50 to $100 to get by until a paycheck hit.

With this in mind, we sought to find a better option than traditional and expensive overdraft to address the smaller dollar, short-term liquidity needs of our customers that were triggering overdraft fees. Our solution was to offer our customers instant, interest-free liquidity, up to $250, whenever they need it to buy those everyday essentials without incurring high overdraft fees. Millions of customers now access our ExtraCash service. We estimate consumers have saved over $1.5 billion in overdraft fees, with $50 million in ExtraCash transactions delivered.[5]

Our customers can also open a Dave Bank account, which we launched in December 2020 through a partnership with Evolve Bank & Trust. Dave Banking comes with no minimum balance fees or overdraft fees, real-time spend alerts, and the ability for our customers to access their paycheck up to 2 days early.

Lastly, we're the first fintech to help customers put money in their pockets by tapping into the gig economy through our "Side Hustle" capability. This product helps customers apply to additional side income opportunities from Uber, Instacart, DoorDash, Lyft, and other partners. We have facilitated nearly three million applications for work since this launched, in 2019, helping our members generate millions of dollars in incremental income.[6]

As you can see, at Dave, we are constantly striving to add services and functionality to our product set to improve our customers' financial health. Through our innovation practices and determining the pain points for the everyday consumer, we anticipate that we will continue to add additional tools to help improve the financial lives of our customers. To that end, later this year we plan to add yet another option to improve the financial life of our customers—allowing them to build their credit when using Dave for some of their regular transactions.

At the end of the day, Dave stands for the everyday person; the everyday mom or dad who make up the backbone of today's working family. We realize that overdraft—as a short-term solution for the next tank of gas or bag of groceries—is critical to millions of Americans. But traditional financial services failed to deliver a fair product. At Dave, we're working to level the financial playing field for those who need it most.

Thank you again for the invitation to appear before you. I look forward to answering your questions.

PREPARED STATEMENT OF DAVID POMMEREHN

SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CONSUMER BANKERS ASSOCIATION

MAY 4, 2022

Chairman Warnock, Ranking Member Tillis, and Members of the Subcommittee, I am David Pommerehn, General Counsel at the Consumer Bankers Association (CBA) and I appreciate the opportunity to testify at today's hearing. In my two decades within the financial services industry, I have worked to promote consumer choice and for the establishment of products that meet consumers' needs, including overdraft services. CBA is the voice of the retail banking industry whose products and services provide access to funding for 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.

With ongoing financial difficulties due to the pandemic, the average American is struggling to ensure they have access to the necessities their families need. From gas to get to work, to groceries to feed their children, people need access to emergency liquidity at increasing rates. According to the Federal Reserve, nearly half of all American adults say they cannot cover an unexpected expense of $400. Similarly, Bankrate states "63 percent of American adults say they are unable to pay an unex-

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[4] CFPB Director Rohit Chopra. 01 Dec 2021. "Prepared Remarks of CFPB Director Rohit Chopra on the Overdraft Press Call". "Most financial institutions charge a fee, typically around $34, for this service."

[5] Dave Analyst Day. 25 Mar 2022. "Dave users have taken over $45M of overdraft protection advances, typically avoiding about $35 overdraft fee from their legacy bank. Dave Users have recorded in aggregate $300–400M/year in fees from their legacy banks in 2019–2020."

[6] Ibid. "2.9M+ job applications submitted since Sept. 2020."

pected 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.[1]

Banks are aware of these challenges and work diligently to provide access to safe and affordable products to U.S. consumers. The demand for overdraft services is based largely on customer need and choice and for many, is the last viable source of short-term liquidity. In recent years, various groups have examined how consumers use overdraft services. Some have concluded overdraft services are inherently bad for consumers. These studies have largely assumed a reasonable consumer would avoid overdraft and institutions providing overdraft services must therefore be "tricking" consumers. These assumptions are fundamentally flawed. The overdraft product is based on clear disclosures and personal experience. The decision to proactively opt-in and utilize the overdraft product is solely up to the customer.

The regulatory framework that governs overdraft services for point-of-sale (POS) and ATM transactions clearly acknowledges the role of the consumer to make informed, individual choice about what is best for their personal financial well-being. In 2010, significant changes were added to the law on POS and ATM overdraft services to increase transparency and improve disclosures.[2] Since the implementation of these reforms, consumers must affirmatively opt-in to overdraft services for POS and ATM withdrawals and debit card purchases, and they receive numerous written disclosures concerning their right to revoke the decision to opt-in at any time, including an account statement disclosure whenever they incur an overdraft fee. Consumer choice is central to the functionality of the overdraft product, allowing for maximum transparency. This is contrary to recent statements made by the Director of the Consumer Financial Protection Bureau (CFPB or Bureau) and other policymakers that have likened overdraft services to "junk fees" that are not properly conveyed to consumers. Statements that overdraft fees are hidden and that consumers do not choose to use them present an inaccurate and misleading depiction of the product.

The Risks of Restricting Overdraft

The restricting overdraft services would create complex challenges for consumers, service providers and merchants. For consumers, restrictions on overdraft services would reduce access to an emergency safety net on which many Americans rely. Further, merchants and service providers would be forced to deny the transaction, creating a loss of income from a given sale of goods or services.

Consumers would still incur insufficient funds fees, which in most cases are equal to the fee charged for an overdraft. In addition, if the bank or credit union does not cover the transaction, the customer may incur a returned payment fee imposed by the payee or merchant, resulting in additional fees in the form of late and/or interest related fees. In the end, the consumer may pay more in fees than if the bank had covered the item using overdraft services.[3]

Returned items can also result in nonmonetary costs for consumers. After imposing a nonsufficient funds fee (NSF), the merchant may also report that event to a credit bureau which can adversely affect the consumer's credit score. The NSF fees can vary by merchant transaction and depend upon when the check or transaction is cleared or posted to the consumer's financial institution. When given an option, many consumers would prefer having their purchase paid for and not returned since merchant NSF and associated fees can be higher than fees for overdraft services. Restricting the availability of overdraft services may also cause some consumers to switch to nonbank lenders who are less equipped to provide them with a suite of suitable financial products services, such as a significantly less regulated payday lender or check casher. Additionally, these institutions do not abide by the same broad Federal oversight as banks, depriving consumers of the high level of regulatory protection they deserve.

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[1] *https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-withunexpected-expenses.htm*

[2] The Electronic Funds Transfer Act, 15 U.S.C. §§1693, et seq., and its implementing regulation, Regulation E, 12 CFR Part 1005, administered by the Bureau, regulates mandatory overdraft service opt-in for checking accounts. The Truth in Savings Act, 12 U.S.C. §4301 and its implementing regulation, Regulation DD, 12 CFR Part 1030, requires banks to provide to consumers disclosures about terms and costs of deposit accounts fee disclosures in checking accounts.

[3] Note that this is only true for checks and ACH transactions. It is not true for ATM and debit card transactions for customers who did not opt-in. Those transactions are declined at point of sale with no NSF fee.

Regulatory Acknowledgement

In December 2021, Office of the Comptroller of the Currency's (OCC) Acting Comptroller 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. [4]

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. He stated: "limiting overdrafts may limit the financial capacity for those who need it most," noting the import benefit overdraft services can provide to consumers. CBA agrees with the Acting Comptroller and encourages other policymakers to undertake a comprehensive review of the overdraft market before promulgating changes that may have adverse effects for consumers.

Additionally, On April 27, 2022, commenting on recent bank-led overdraft innovations while testifying before the House Financial Services Committee, CFPB Director Rohit Chopra stated: "This is one of the beauties of a competitive market. When there is real competition [. . .] people can benefit across the board." Director Chopra understands the market is self-regulating and that banks are proactively removing or significantly decreasing these fees to ensure the retention of consumers.

Consumer Demand Leads to Change

Well informed and technically savvy consumers drove recent changes to overdraft. Driven by a commitment to meeting evolving consumer demands, America's leading banks have unveiled innovative financial tools to provide consumers more choice and flexibility to avoid unintended fees.

In December of 2021, Curinos, a global data intelligence firm, released its "Competition Drives Overdraft Disruption" study (Appendix A), which found consumers make highly informed choices about who they bank with and when to use overdraft services. [5] These decisions are based on real-time access to account information, clear disclosures and personal experience.

Accordingly, a growing number of America's leading banks have unveiled new innovations designed to avoid overdraft fees or have an overdraft product with features selected by the consumer (Appendix B). 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 (i.e., avoiding an overdraft trigger after purchasing a 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), eliminating extended overdraft fees, eliminating returned items fees, real-time account updates and low balance notices. We believe these and other changes, in conjunction with clear disclosures, add continued benefit to consumers who rely on overdraft services to cover short-term gaps in finances by continuing to provide a viable service 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 consumers who are unable to cover an unexpected bill with savings alone. Without access to a viable, bank offered short-term liquidity product like overdraft, consumers will be left with little recourse but to use less-supervised, less-regulated, nondepository institutions to meet their needs—an undesirable position to place vulnerable consumers.

Curinos Data—Consumers Understand Benefit and Value Overdraft

The Curinos research found the changes to bank overdraft service programs is being driven more by competition instead of regulation and the market rewards organizations that overhaul their existing overdraft programs or develop alternative products. Institutions that are slow to act are losing customers to more aggressive

[4] 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.*

[5] Curinos, Competition Drives Overdraft Disruption (December 2021)—*https://curinos.com/insights/competitiondrives-overdraft-disruption/*—attached hereto as Appendix A. This 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.

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 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 percent of overdrafts come from consumers who intend to use the service. More than 80 percent 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 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 percent to 4.9 percent 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, because of banks' innovations, overdraft fees, per U.S. adult, have declined by 77 percent, 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 percent 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 who have seen a dramatic increase in market share, have created solutions to better manage or reduce the cost of overdraft. These entities have experienced a 40 percent increase in account acquisition since 2017. Financial institutions that haven't adopted overdraft innovation have experienced a nearly 30 percent reduction in consumer acquisition.

These findings underscore the fact that, outside of overdraft, few options remain for consumers to meet their emergency liquidity needs within the well-regulated, well-supervised banking system. CBA has long warned, and bank regulators agree, further restricting access to short-term liquidity options, such as overdraft services, would drive many families to predatory payday lenders and other expensive, less-regulated 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 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

Access to reasonably priced small-dollar liquidity products is essential to meeting consumer need with regards to cash shortfalls. 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 and banks have been encouraged by policymakers to enter or remain in the small-dollar lending market. In the past, banks worked with regulators to develop products carefully designed to ensure strong safeguards at reasonable prices. However, as highlighted in a recent report for the Gov-

ernment Accountability Office (GAO), depository institutions are hesitant to offer such loans in part because of the changes to related rules or guidance in recent years.[6] In particular, some market participants have noted that banks do not want to offer small-dollar products because they are expensive to develop, and the regulations or supervisory expectations may change. The GAO went on to note that from 2010 to 2020, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency issued or rescinded at least 19 actions related to small-dollar loans, leading to continued regulatory uncertainty.

Consumer demand still exists for a short-term loan product and, if allowed, highly regulated banks can make safe, affordable, and easy to access small-dollar loans to consumers in need.

The CFPB Fee Inquiry

Heavily shaping the current overdraft 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).[7] 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 the Subcommittee. First, fee amounts and disclosures are subject to numerous Federal and State laws. Second, fees are a necessity that allows lenders to recoup operational costs, mitigate risk and can even deter repeated use by a customer. Finally, by characterizing various, disconnected charges as "junk fees," the RFI serves to confuse consumers and undercut the purpose and utility of disclosures that regulators have worked so hard to police and implement.

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 other financial institutions, have failed to disclose properly the fees associated with any consumer product. Recently, the Bureau took enforcement action finding a financial services company "provided consumers with inaccurate or incomplete information about the fees it assessed."[8] 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.

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, as previously mentioned, 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.

Congress charged the Bureau with enforcing Federal consumer law consistently, "in order to promote fair competition."[9] 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.[10]

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[6] "Banking Services: Regulators Have Taken Acton To Increase Access, But Measurement of Actions' Effectiveness Could Be Improved", GAO (February 2022).

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

[8] 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-intendedto-help-people-re-enter-society-after-incarceration/*.

[9] 12 U.S.C. §5511(b)(4).

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

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 the options available that could impede the ability of those most in need of the tools they need to address their financial needs. CBA appreciates the opportunity to 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.

Appendix A: Curinos 2021 Overdraft Study, "Competition Drives Overdraft Disruption"

State of Overdraft

Evolving Consumer Preferences Are Driving Competition and Innovation Across the Industry

REPORT PRESENTED BY

curinos

Key Insights

Consumers understand and value overdraft

- **A majority of consumers see benefit in overdraft,** specifically as an emergency safety net to cover rent/mortgage, utility payments, groceries and medicine.
- Nearly two-thirds of consumers indicated triggering an **overdraft payment was a conscious choice.**
- While consumers favor some proposed regulations limiting the cost of overdraft, **62% say they would reconsider support if the rules limited access to overdraft.**

Overdraft use continues to decrease

- **Frequent overdraft use fell by 40% to 4.9%** between 2014 and 2020.
- Bank-led initiatives aimed to help consumers avoid an unintended fee have dramatically reduced the number of small purchases tied to overdraft.

Competitive marketplace spurs innovation

- **Consumers increasingly choose financial institutions based on product offerings** and perceive financial institutions that have innovated on overdraft as more desirable.
- Since 2008, **as a result of bank innovations, overdraft fees, per U.S. adult, have declined by 77%**, or $158, and now seem to cover larger — and potentially more important — purchases.
- Consumers were **more likely to open new accounts or increase their checking account activity** with banks offering overdraft innovations.
- Traditional banks and fintechs offering consumer-friendly overdraft and overdraft alternatives have experienced a 40% improvement in account acquisition since 2017, compared to a decline of almost 30% for non-innovators.
- Competition will drive financial institutions to address gaps in their product suite so they can provide short-term credit alternatives to customers.

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Appendix B: Bank Overdraft Innovations

Overdraft Innovations

FROM AMERICA'S LEADING BANKS

CBA 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.

Santander

Raises the no-fee overdraft threshold to $100 for every Santander Bank client. Also eliminated the overdraft protection transfer fee (pervious $12) and reduced the daily overdraft fee cap from six to three.

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

Ended non-sufficient fund fees for checking accounts. Also increased 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.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM JASON WILK

Q.1. Consumer advocates have raised concerns over the "tips" model employed by overdraft and cash advance apps, calling them "an attempt to mask finance charges, evade interest rate limits, and hide overdraft fees."[1] These apps are increasingly soliciting "voluntary" tips from customers in exchange for their service. However, while the tips may be voluntary in name, these apps have been found to employ methods aimed at pressuring customers to tip and making it difficult to not tip. Additionally, some of these apps have been found to have their voluntary tip model default at a certain dollar figure. These individual default tip may appear relatively small to customers each pay period, but can quickly add up to high costs and interest rates equivalent to annual percentage rates (APRs) as high as 520 percent, creating "cycles of debt."[2] For this reason, tips provide companies like Dave an opportunity to evade interest rate limits and other lending laws. In order to better understand the tips model and how your company utilizes it, I request answers to the following questions:

What percentage of users of the advance service tip?

A.1. The tipping option came out of our overall philosophy: to find ways to build and offer products that banks won't. That's why we started with no interest cash advance. If people like the product, they have the option to tip. And we find the numbers go up as people access the product more than once. Approximately 64 percent and 75 percent of Members chose to leave a tip for the 3 months ended March 31, 2022, and 2021, respectively.

Q.2. What is the average tip, both in dollar amounts and in percentage of the advance?

A.2. The average amount of tip Members chose to leave was approximately $6.93 and $4.07 per advance for the 3 months ended March 31, 2022, and 2021, respectively. We do not calculate the tip as a percentage of the advance.

Q.3. How much is the average tip in APR terms?

A.3. The advances that Dave makes are nonrecourse and a majority are fully repaid by the Member by their next pay period. As such we do not calculate an APR on tips and believe that APR is not a fair representation of the total cost of capital.

Q.4. How much have you collected in tips in the past year, and what percentage of your revenue comes from consumer tips?

A.4. Tips for the 3 months ended March 31, 2022, were approximately $13.9 million. We do not publicly disclose what percentage of our revenue is generated through tips.

Q.5. What percentage of consumers request advances pay express fees, and what percentage of your revenue come from express fees?

A.5. In terms of delivery of the advances, users can opt for free advance, which takes 1–3 days, or an optional express fee for faster delivery. The expedited transfer fee ranges from $1.99 to $5.99, de-

[1] *https://www.nclc.org/images/pdf/banking-and-payment-systems/NCLC-comments-on-CFPB-Junk-Fees-RFI-87-FR-58015.2.22.pdf*

[2] Id.

pending on the size of the advance taken. The average is around $5. While use of the expedited transfer is entirely optional, nearly all customers do choose it. This fee is similar to other financial products that involve fund transfers, including those offered by Paypal and Venmo.

Q.6. How much have you collected in express fees in the past year?

A.6. We do not publicly disclose this information. We are happy to discuss this or other questions in more detail with you or your staff.

Q.7. Do you treat consumers who do not tip differently in any way?

A.7. We do not treat Members who choose not to tip differently. It is completely optional and there is no difference in service or access to services for those who choose not to tip.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

ALLY FINANCIAL PRESS RELEASE

Press Releases

Ally Bank eliminates all overdraft fees, ending centuries-old industry practice and lifting consumer burden

- Americans paid $12.4 billion in overdraft fees in 2020, according to the 2021 FinHealth Spend Report
- Removal of fees will help protect consumers disproportionately hurt by overdrafts

CHARLOTTE, N.C., June 2, 2021 /PRNewswire/ -- Ally Bank, the largest digital bank in the U.S. and a division of Ally Financial Inc. (NYSE: ALLY), eliminated overdraft fees on all accounts today. Every Ally Bank customer is eligible, and there are no requirements or restrictions.

Ally Financial CEO Jeffrey Brown said: "This is a significant advancement for consumers as we live out our mission and live up to our name - being a true ally. Overdraft fees are a pain point for many consumers but are particularly onerous for some. It is time to end them.

"Nationwide, more than 80% of overdraft fees are paid by consumers living paycheck to paycheck or with consistently low balances – precisely the people who need help stabilizing their finances. Eliminating these fees helps keep people from falling further behind and feeling penalized as they catch up," said Brown.

Ninety-five percent of the consumers who paid $12.4 billion in overdraft fees in 2020 were "financially vulnerable" and disproportionately Black and Latinx, according to the 2021 FinHealth Spend Report. Among those financially vulnerable households with checking accounts, 43% averaged 9.6 overdrafts during 2020, resulting in annual overdraft fees of hundreds of dollars per household on average.

Diane Morais, president of consumer and commercial banking at Ally Bank, said, "Since we launched Ally in 2009, we've worked tirelessly to create simple experiences that are built around consumer needs. We know that money can be a source of stress and confusion, and we try to simplify that for people. Overdraft fees can be a major cause of anxiety. It became clear to us that the best way to relieve that anxiety was to eliminate those fees."

The elimination of overdraft fees is the latest example of Ally's "Do It Right" commitment. Ally has never charged overdraft fees for debit card transactions or charged more than one overdraft fee per day. For over a decade, Ally has been leveraging its direct bank model to pass value back to customers with no minimum balance requirements, no monthly maintenance fees, no ACH transfer fee, and a large nationwide, no-fee ATM network with over 43,000 Allpoint ATMs.

About Ally Financial
Ally Financial Inc. (NYSE: ALLY) is a digital financial services company committed to its promise to "Do It Right" for its consumer, commercial and corporate customers. Ally is composed of an industry-leading independent auto finance and insurance operation, an award-winning digital direct bank (Ally Bank, Member FDIC and Equal Housing Lender, which offers mortgage lending, point-of-sale personal lending, and a variety of deposit and other banking products), a corporate finance business for equity sponsors and middle-market companies, and securities brokerage and investment advisory services. A relentless ally for all things money, Ally helps people save well and earn well, so they can spend for what matters. For more information, please visit www.ally.com and follow @allyfinancial.

For more information and disclosures about Ally, visit https://www.ally.com/#disclosures.

For further images and news on Ally, please visit http://media.ally.com.

Contact:

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Ally Public Relations
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SOURCE Ally Financial

STATEMENT SUBMITTED BY AFR

AFR EF Americans for Financial Reform Education Fund

Statement for the Record
United States Senate Committee on Banking, Housing and Urban Affairs
Subcommittee Hearing: Examining Overdraft Fees and Their Effects on Working Families

Americans for Financial Reform (AFR) appreciates the opportunity to submit this statement for the record of the United States Senate Committee on Banking, Housing and Urban Affairs subcommittee hearing on overdraft fees.

Overdraft fees are paid most by the people who can least afford them. These are high fees that, (1) bear no relationship to the cost 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/cfpbresearch-shows-banks-deep-dependence-on-overdraft-fees/

[2] 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/cfpbresearch-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 Senators to support Senator Booker's Stop Overdraft Profiteering Act (S. 2677) and we have urged members of the House of Representatives to co-sponsor and support Representative Maloney's Overdraft Protection Act (H.R. 4277). 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 into 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.

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 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.

[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-howinequitable-it-can-be/

* * *

Thank you for the opportunity to express AFR's views on the success of the CFPB. If you have additional questions on these issues, please contact Elyse Hicks, AFR's Consumer Policy Counsel, at elyse@ourfinancialsecurity.org or 202-684-2974.

Sincerely,

Americans for Financial Reform

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

With New Changes, Company Will Have Reduced Overdraft Fee Revenues by 97% from 2009 Levels

January 11, 2022 at 7:30 AM Eastern

Bank of America today announced significant changes to its overdraft services, including plans to eliminate non-sufficient funds (NSF) fees beginning in February, and to reduce overdraft fees from $35 to $10 beginning in May. The company will also eliminate the transfer fee associated with its Balance Connect™ for overdraft protection service in May. These and earlier changes over the last decade, together with industry-leading solutions that can help consumer clients avoid overdraft fees – such as the no overdraft fee SafeBalance® account and Balance Assist™ – will lead to overdraft fee revenues being reduced by 97% from 2009 levels.

"Over the last decade, we have made significant changes to our overdraft services and solutions, reducing clients' reliance on overdraft, and providing resources to help clients manage their deposit accounts and overall finances responsibly," said Holly O'Neill, President of Retail Banking, Bank of America. "Throughout the process we have engaged our National Community Advisory Council (NCAC) for their guidance and feedback on our changes. These latest steps will further support our clients and empower them to create long-term financial wellness."

Progress toward reducing overdraft fees

Since 2010, Bank of America has taken many steps to empower its consumer and small business clients to bank with greater confidence and reduce overdraft usage. The company leads the industry in helping clients avoid overdrafts and, in doing so, has significantly reduced the vast majority of fees related to overdraft. Key milestones along this journey have included:

- 2010 – Eliminated overdraft fees for consumer clients when using debit cards at the point of sale
- 2011 – Introduced courtesy low balance alerts
- 2014 – Launched the SafeBalance “no overdraft fee” account
- 2017 – Eliminated the extended overdrawn balance charge
- 2020 – Created Balance Assist, a low-cost solution to manage short-term liquidity needs
- 2021 – Launched Balance Connect for overdraft protection, letting clients link to up to five accounts to avoid overdrafts
- Feb 2022 – Will eliminate non-sufficient funds fees
- Feb 2022 – Will remove ability for clients to overdraw their accounts at the ATM
- May 2022 – Will reduce overdraft fees from $35 to $10
- May 2022 – Will eliminate Balance Connect for overdraft protection transfer fee (formerly $12)

“We remain committed to taking actions that will further bring down overdraft fees in the future and continue to empower clients to drive positive changes to behavior pertaining to overdraft,” added O’Neill.

Essential Solutions

In addition to the changes to overdraft related fees, Bank of America’s suite of Essential Solutions offers a powerful combination of transparent, low and no cost, easy-to-use offerings that help clients budget, save, spend and borrow carefully and confidently. The full array of solutions includes:

- **SafeBalance®** – With SafeBalance, there are no overdraft fees, and the monthly maintenance fee is waived for eligible students under the age of 25 as well as for clients enrolled in our Preferred Rewards program.
- **Balance Assist** – Balance Assist provides an affordable way for clients to manage their short-term liquidity needs, borrowing only the amount they need, up to $500 (in increments of $100) for a $5 flat fee regardless of the amount borrowed. Repayments are made in three equal monthly installments over a 90-day period. To learn more, review these additional product details and eligibility criteria. Borrowers must have been a Bank of America checking account client for at least one year.
- **Balance Connect** – Balance Connect allows our clients overdraft protection through the ability to link up to five accounts to their checking, while increasing simplicity and accessibility through digital sign-up and management.
- **BankAmericard® Secured Card** – This credit card can help clients establish, strengthen or rebuild credit, and they can apply for an account with a security deposit starting as low as $300. With responsible credit behavior, over time, this could help clients improve their credit score.
- **Affordable Home Loans** – In early 2019, Bank of America launched its now expanded $15 billion Community Homeownership Commitment, which has already helped 32,000 low- and moderate-income homebuyers achieve homeownership through low down payment loans and down payment and closing cost grants. By 2025, Bank of America anticipates helping more than 60,000 individuals and families to purchase homes through the program.
- **Keep the Change®** – This tool helps clients build savings by automatically depositing spare change from rounded up debit card transactions into a savings account. Over the last 15 years, this program has helped clients direct more than $15 billion in excess change to client savings.
- **Better Money Habits®** – A free financial education platform that provides a simple, accessible way to connect people to the tools, resources and education they need to take control of their finances.

Recognized Leadership

Last year, Bank of America has been recognized with more than 280 industry awards for its innovation, financial technology, and delivering exceptional client services and solutions.

Forward-Looking Statements

Certain statements contained in this news release may constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements represent the current expectations, plans or forecasts of Bank of America based on available information. Forward-looking statements can be identified by the fact that they do not relate strictly to historical or current facts. These statements often use words like "expects," "anticipates," "believes," "estimates," "targets," "intends," "plans," "predict," "goal" and other similar expressions or future or conditional verbs such as "will," "may," "might," "should," "would" and "could." Forward-looking statements speak only as of the date they are made, and Bank of America undertakes no obligation to update any forward-looking statement to reflect the impact of circumstances or events that arise after the date the forward-looking statement was made.

Forward-looking statements represent Bank of America's current expectations, plans or forecasts of its future results, revenues, expenses, efficiency ratio, capital measures, and future business and economic conditions more generally, and other future matters. These statements are not guarantees of its future results or performance and involve certain known and unknown risks, uncertainties and assumptions that are difficult to predict and are often beyond Bank of America's control. Actual outcomes and results may differ materially from those expressed in, or implied by, any forward-looking statements. You should not place undue reliance on any forward-looking statement and should consider all of the uncertainties and risks discussed under Item 1A. "Risk Factors" of Bank of America's Annual Report on Form 10-K for the year ended December 31, 2020, and in any of Bank of America's other subsequent Securities and Exchange Commission filings.

Bank of America

Bank of America is one of the world's leading financial institutions, serving individual consumers, small and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. The company provides unmatched convenience in the United States, serving approximately 66 million consumer and small business clients with approximately 4,200 retail financial centers, approximately 17,000 ATMs, and award-winning digital banking with approximately 41 million active users, including approximately 32 million mobile users. Bank of America is a global leader in wealth management, corporate and investment banking and trading across a broad range of asset classes, serving corporations, governments, institutions and individuals around the world. Bank of America offers industry-leading support to approximately 3 million small business households through a suite of innovative, easy-to-use online products and services. The company serves clients through operations across the United States, its territories and approximately 35 countries. Bank of America Corporation stock (NYSE: BAC) is listed on the New York Stock Exchange.

STATEMENT SUBMITTED BY CAPITAL ONE

John Durrant
Capital One
Executive Vice President, Retail Bank

Written Testimony to the U.S. Senate Committee on Banking, Housing, and Urban Affairs Financial Institutions and Consumer Protection Subcommittee

"Examining Overdraft Fees and Their Effects on Working Families"

May 4, 2022

Thank you for the opportunity to submit testimony before the Senate Committee on Banking, Housing, and Urban Affairs Financial Institutions and Consumer Protection Subcommittee hearing on consumer overdraft practices.

I am John Durrant, Executive Vice President of Retail Bank and Enterprise Payments at Capital One. Capital One was founded in 1988 by our current Chairman and CEO, Rich Fairbank. The company went public in 1994. From the beginning, we've set our sights on reimagining banking. Through a commitment to great products, great talent, and great technology, Capital One has brought innovative products to consumers across the credit spectrum. Since our founding, we have diversified our business, enhanced our technology and analytics, and delivered breakthrough products for customers and clients in the U.S., United Kingdom, and Canada. Over 50,000 associates serve millions of customers every day. We are a Fortune 100 leader, a nationally-recognized brand, and a digital innovator on a journey to become a leading information-based technology company.

<u>Capital One's history of consumer-focused product innovation</u>

Capital One entered into Retail banking in 2005 with the acquisition of Hibernia Bank, followed by acquisitions of North Fork Bank, Chevy Chase Bank and ING Direct. Since those acquisitions, we have been on a journey to reimagine banking. This journey is anchored to our core mission to change banking for good. This means bringing ingenuity, simplicity, and humanity to banking. We know the impact that a consumer's relationship with their finances can have on their well-being, and we want to have a positive impact on our customers' lives.

Our products and services are designed with the goal of promoting access and inclusivity. Our Capital One 360 Checking Account, which is the product we offer any adult looking to open a checking account with us, has no monthly fees and no minimum balance requirements. Whether a customer walks into one of our branches, stops by a Capital One Café, or opens an account online, they will get the same great product. We also want to ensure that customers have convenient access to withdraw and deposit cash, regardless of where they live. We offer access to over 70,000 free ATMs and the ability for customers to add cash to their Capital One 360 Checking Account at participating CVS® locations in the U.S. In 2021, Capital One also added the ability for customers to receive their paycheck up to two days early at no cost. Giving customers quicker access to their money provides them with additional flexibility in managing their finances.

In recent years, Capital One has been recognized as a leader and innovator in the financial services industry. We have received numerous awards, including ranking highest in the J.D. Power U.S. National Banking Satisfaction Study two years in a row, recognition as one of the World's Best Banks 2022 by Forbes and as Best Overall Bank on Money's list of the 5 Best National Banks of 2021-2022.

Building savings is another key aspect of helping customers be financially successful. Our savings accounts also have no monthly fees and no minimum balance requirements. Our 360 Performance Savings account offers an interest rate that is well above the national average, and the rate applies to any balance, so customers across the wealth spectrum all get the same rate.

Starting in 2008, in consultation with community partners, Capital One made a series of changes that have helped customers avoid millions in fees.

These changes included:
- Setting fee caps
- Setting dollar thresholds before a fee would be charged
- Providing the ability to link another deposit account for overdraft protection at no charge
- Launching Next Day Grace overdraft service for 360 Checking, which gave customers until the end of the next business day to bring their account balance positive before a fee would be assessed
- Reducing the non-sufficient funds (NSF) fee to $9 for 360 Checking while only assessing it on paper checks
- Setting 'auto decline' as the default overdraft option for 360 Checking, meaning that Capital One would generally decline all transactions that attempt to overdraw the customer's account and precludes the customer from incurring any overdraft fees

In August and September 2021, for the vast majority of our customers, we eliminated NSF fees, lowered our daily overdraft fee cap, and added our grace period feature for "legacy" or "discontinued" checking products that did not originally have that feature.

Launch of 'No-Fee Overdraft'

On December 1, 2021, Capital One announced that we would eliminate consumer overdraft and NSF fees all together. On January 13, 2022, we launched No-Fee Overdraft, thereby eliminating all consumer overdraft and NSF fees.

We know that many customers have a need for overdraft protection to help them when they have a cash flow gap. We continue to strive to meet that need as often as possible. For those customers who ask us to do so through opting into No-Fee Overdraft, we are still able to approve the vast majority of transactions that we used to approve when we had the $35 overdraft fee.

We believe that structured fairly, overdraft can serve as a financial buffer for our customers. With the launch of No-Fee Overdraft, we added a deposit requirement for customers to maintain access to the service. Customers need to deposit at least $250 in at least two of the previous three calendar months. The deposits can come from many different sources including cash, checks, and ACH, not just payroll direct deposits. We believe that this deposit requirement will help ensure that customers who use the service will have the ability to pay back the amount they overdraw. This helps the customer be more financially healthy while also protecting Capital One against losses.

Even though we have eliminated the overdraft and NSF fees, we continue to default new consumer checking account customers into our 'auto-decline' option. We believe it should be a customer's choice whether they want to have Capital One consider paying transactions that would overdraw their account. We have also maintained the ability for a customer to choose whether they want us to consider ATM and one-time debit transactions. We continue to notify customers when they overdraw their account and share information to ensure they are aware of the different overdraft options available to them. Customers can change their overdraft option at any time.

Why did Capital One decide to eliminate overdraft and NSF fees?

From the day we entered banking, we have worked to provide customers access to a bank account they can rely on as a building block for their life. We have long been committed to supporting our customers and recognize that unexpected expenses occur from time to time. By making changes to our overdraft and NSF fee policies, we are providing customers with help when they need it and ensuring their bank account is a source of financial health.

We take the time to understand the needs and concerns of our customers, and are committed to supporting their growth and financial well-being. This is central to our mission to change banking for good. Eliminating overdraft and NSF fees is an example of how we offer products and services that are responsive to our customers' needs. Inclusive policies, both in business and the community, thrive when we put people first.

Although eliminating overdraft and NSF fees has a cost to us — approximately $150M in revenue per year — we believe that providing our customers with No-Fee Overdraft helps build a great franchise with deep customer loyalty. New customers are eager to switch to a bank that offers them a better deal, and existing customers opt to stay with us both because of what we provide and what we stand for. Some customers expand their relationship with us, either by consolidating their banking needs or by trying our other products and services. Others will tell their family and friends about their positive experience with Capital One. We are optimistic that, through decisions like this one, we can continue to grow our deposit accounts by winning the trust and loyalty of our customers.

Conclusion

This is not the beginning, nor will this be the end of our journey to change banking for good. We are motivated by the positive response and results we're seeing so far, and we will continue to evaluate ways to evolve our product offerings over time. We were honored to be recognized on the TIME100 Most Influential Companies 2022 in recognition of our decision to eliminate overdraft. Thank you for the opportunity to submit Capital One's perspective on overdraft fees as we continue to work towards our mission to change banking for good.

STATEMENT SUBMITTED BY CFA

Consumer Federation of America

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

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

May 4, 2022

The Consumer Federation of America (CFA) appreciates the opportunity to submit a statement for the record for the May 4, 2022 hearing, "Examining Overdraft Fees and Their Effects on Working Families." CFA is a nonprofit association of more than 250 national, state, and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years, CFA has been at the forefront of ensuring that our marketplace is fair and safe by advancing the consumer interest. CFA has a broad portfolio of issues including financial services, banking, credit, investor protection, privacy, food safety, product safety, telecommunications, energy efficiency, housing, insurance, and saving. CFA's non-profit members range from large organizations, such as Consumer Reports and AARP, to small state and local advocacy groups, as well as unions, co-ops, and public power companies.

We appreciate the Subcommittee's attention to this important subject, and we write to highlight the continuing issue that pervasive, costly overdraft and nonsufficient fund (NSF) fees cause for consumers—especially given that these fees are borne predominately by those who can least afford them.

1. Recent Changes and Efforts

CFA applauds recent efforts by financial institutions to expand low- or no-cost banking options and accounts with no overdraft or NSF fees, such as the BankOn accounts powered by the work of Cities for Financial Empowerment. There are currently more than 200 low-cost accounts which prohibit overdraft and NSF fees, as well as other terms required by the Cities for Financial Empowerment Fund and BankOn National Account Standards.[1] Reasonable monthly bank account fees, like those permitted by the BankOn National Account Standards, are more transparent and easier for consumers to compare than high back-end overdraft and NSF fees, which are extremely difficult to predict. However, these accounts do not replace the need for reform of predatory overdraft fees on other accounts.

[1] *See* https://joinbankon.org/accounts/.

CFA also applauds recent announcements by a few of America's largest banks to completely eliminate overdraft and NSF fees, like Capital One and Citibank, or drastically reduce these fees, like Bank of America. Other large and regional banks have made modest changes to their programs, like instituting 24-hour grace periods, eliminating NSF fees, or charging only one fee per day.

Further, some banks have introduced responsible small dollar loan products to help provide consumers with an affordable credit option rather than relying on exploitive overdraft fees when facing budget shortfalls.

Although CFA applauds these combined measures, they alone are inadequate, and consumers cannot rely solely on the goodwill of certain financial institutions.

In addition, CFA appreciates the recent action by Senator Chris Van Hollen (MD), Reverend Raphael Warnock (GA), Chairman Sherrod Brown (OH), Senator Cory Booker (NJ), and Senator Jack Reed (RI) urging the country's largest banks, which have yet to make significant changes to their overdraft policies, to lower or eliminate overdraft fees.

Further, CFA appreciates the Consumer Financial Protection Bureau's (CFPB) recent efforts on overdraft fees, including publishing research on overdraft fees;[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]

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

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

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

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[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.

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

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

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

2. <u>The Problem of Overdraft Fees</u>

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

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

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

[8] 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/.

[9] *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/.

[10] *See* Ann Carns, *Customers Can Lose When Banks Shuffle Payments*, N.Y. TIMES (Apr. 11, 2014), https://www.nytimes.com/2014/04/12/your-money/customers-can-lose-when-banks-shuffle-payments.html.

These fees bear no relationship to the cost banks incur for covering the overdraft charge—the average overdraft fee is $35, while the most comment transaction to trigger overdraft fees are debit transactions which average $20 each.[11]

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

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

This disproportionate harm has a disparate impact for Black and Hispanic borrowers. Currently, about 14 percent of Black and 12 percent of Hispanic households are unbanked, compared to 2.5 percent of white households.[16] 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.[17] Such a disparity illustrates how harmful practices such as charging excessive overdraft fees can contribute to the financial exclusion of minority communities and can have devastating generational impacts on their wealth accumulation. Further, unexpected and high

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[11] 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)].
[12] 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)].
[13] CRL, Banks Must Stop Gouging (June 2020).
[14] *Id.*
[15] CFPB, Data Point (July 2014).
[16] FDIC, HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES (2019), https://www.fdic.gov/analysis/household-survey/2019execsum.pdf.
[17] PEW TRUSTS, HEAVY OVERDRAFTERS: A FINANCIAL PROFILE (April 2016), https://www.pewtrusts.org/-/media/assets/2016/04/heavyoverdrafters.pdf.

fees like overdraft fees are often cited as a reason for a formerly banked person to no longer have a bank account.[18]

3. The "Tip" Model:

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

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

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

4. Recommendations:

We acknowledge that some banks have made significant changes to their overdraft programs, with some ending all overdraft fees, others getting rid of their NSF fees, and some making more modest changes like 24-hour grace periods. While these actions can provide a significant benefit for these banks' customers, these measures are insufficient by themselves to make systemic change.

[18] Pg. 3, CRL, Banks Must Stop Gouging (June 2020).
[19] *See* Statement for the Record, Rachel Gittleman, Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products, CONSUMER FEDERATION OF AMERICA (CFA) (November 2021), https://consumerfed.org/wp-content/uploads/2021/11/CFA-Submits-Statement-for-the-Record-to-U.S.-House-Task-Force-11.2.21.pdf;
Letter, CFA, CRL, NATIONAL CONSUMER LAW CENTER (NCLC), Supervision and Enforcement of Fintech Products and Fee Models That Threaten to Evade Credit, Consumer Protection, and Fair Lending Laws (December 2021), https://consumerfed.org/wp-content/uploads/2021/12/Letter-Urging-CFPB-to-Examine-Fintech-Credit-Products-and-Fee-Models-12-21-21.pdf [Hereinafter CFA, CRL, NCLC, Supervision and Enforcement (Dec. 2021).]
[20] Comments to CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION (DFPI), NCLC, CRL, PRO 02-21, Proposed Rulemaking under the California Consumer Financial Protection Law: Earned Wage Access (March 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CRL_CA_DFPI_EWA_Comments.pdf.
[21] CFA, CRL, NCLC, Supervision and Enforcement (Dec. 2021).

Voluntary action by banks is insufficient, as it will create an uneven playing field with varied protections or none at certain financial institutions. Basic consumer protections should be mandatory among all financial institutions, including banks and credit unions.

Given the substantial harm caused by overdraft fees as they currently stand, we ask Congress to take decisive action to stop abusive overdraft fees at all financial institutions and to establish safeguards to ensure these fees do not come back. We urge members of the committee to cosponsor and vote for Senator Cory Booker's Stop Overdraft Profiteering Act of 2021 (S. 2677).[22]

Key parts of overdraft reform by Congress should include:

- Limiting the number of fees that can be charged to 1 per month and 6 per year;
- Requiring that fees be "reasonable and proportional" to the cost of processing these transactions and the amount of the overdraft;
- Preventing institutions from re-ordering transactions to artificially increase their fees;
- Empowering consumers by requiring that they proactively opt-in to overdraft programs in the first place—rather than automatically being enrolled;
- Improving transparency and disclosures of overdraft coverage, cost, and practices; and
- Prohibiting charging overdraft fees for "debit holds" that exceed actual transaction amounts, among other strong measures.

Additionally, we ask Congress to urge financial regulators—the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency, the Federal Reserve, the National Credit Union Association, and the Federal Deposit Insurance Corporation—to use their authorized power to address the overdraft problem.

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

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

Thank you for your consideration of our input. If you would like to discuss our concerns further, please contact Rachel Gittleman at rgittleman@consumerfed.org.

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[22] Press Release, Senator Cory Booker (NJ), Booker, Warren Reintroduce Bill to Crack Down on Bank Overdraft Fees (August 9, 2021), https://www.booker.senate.gov/news/press/booker-warren-reintroduce-bill-to-crack-down-on-bank-overdraft-fees#:~:text=The%20Stop%20Overdraft%20Profiteering%20Act,for%20checks%20and%20recurring%20payments.
[23] *See* NCLC, CFA, CRL, AFR, Junk Fee Comments, pg. 22-25 (April 2022).

STATEMENT SUBMITTED BY CHIME

Statement for the Record

Submitted to the

Subcommittee on Financial Institutions and Consumer Protection

Senate Committee on Banking, Housing and Urban Affairs

May 4, 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 Financial Institution and Consumer Protection's hearing on, "Examining Overdraft Fees and Their Effects on Working Families" Chime thanks Chairman Warnock and Ranking Member Tillisfor 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.

CITI PRESS RELEASE

Citi Continues to Bolster its Focus on Financial Inclusion by Eliminating Overdraft Fees

This Summer, U.S. Citi Retail Bank consumers will have increased access to even more affordable financial services

New York, NY – Today, Citi announced plans to eliminate overdraft fees, returned item fees, and overdraft protection fees by this Summer. Citi will be the only top five U.S. bank (based on assets*) to completely eliminate these fees, representing its continued commitment as a top leader in banking to increase financial inclusion in underserved communities.

For twenty years, Citi has put measures in place to minimize overdraft fees for its consumers in order to put their financial wellness first. In fact, the overdraft revenue Citi collects has been among the lowest, compared to its competitors. Today's announcement is a prime example of how Citi continues to expand access to inclusive banking products and services that can help advance economic progress, especially for underbanked and unbanked populations.

"This latest enhancement is a significant step for Citi as a leader in the banking industry offering the most consumer-friendly overdraft practices," said Gonzalo Luchetti, CEO of US Personal Banking at Citi. "We are continuously looking for ways to utilize our industry-leading capabilities to make the financial system easier and more equitable for communities who have little or no financial buffer."

In addition to its upcoming overdraft enhancements, Citi continues to offer a robust suite of overdraft protection services for its consumers including:

- **Overdraft Protection Services**: Citi offers two services to cover negative balance transactions, whose fees will also be eliminated with this change:
    - **Safety Check –** Safety Check transfers available funds from a linked Citibank savings account to cover your overdraft plus any fees. For more information, please see https://online.citi.com/US/JRS/pands/detail.do?ID=SafetyCheck
    - **Checking Plus –** If approved, a Checking Plus® line of credit automatically transfers funds from your credit line to your checking account to cover your overdraft plus any fees. Accounts in the Access Account Package cannot be linked to Checking Plus. For more information, please see https://online.citi.com/US/JRS/pands/detail.do?ID=CheckingPlus
- **Access Account Package**: Citi's checkless account package with low or avoidable monthly charges provides customers with a simple, transparent way to manage their finances. Since launching in 2014, the Access Account Package has been viewed as an industry leader due to its flexible structure and automatic protection against debit card overdrafts on your account.
- **Common Sense Protection Measures:** Citi will not authorize ATM or point-of-sale debit transactions in cases when funds are not available.
- **Low Balance Alerts**: Consumers can enroll in Low Balance Alerts via their account online or mobile app.

This announcement is the latest example of how Citi continues to leverage its core business capabilities to advance its Environmental, Social, and Governance (ESG) priorities and help address many of society's toughest challenges. It also complements many of its firm-wide *Action for Racial Equity* efforts in the U.S. that aim to expand banking and credit in communities of color, such as Citi's ATM Community Network,

which provides surcharge-free access to Citibank ATMs for customers of participating minority-owned banks, community banks, and community development credit unions.

For more information, visit
www.citigroup.com/citi/about/personal_banking_and_wealth_management.html.

Citi

Citi, the leading global bank, has approximately 200 million customer accounts and does business in more than 160 countries and jurisdictions. Citi provides consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, transaction services, and wealth management.

Deposit accounts offered by Citibank, N.A. Member FDIC

Additional information may be found at www.citigroup.com |
Twitter: @Citi |YouTube: www.youtube.com/citi | Blog: http://blog.citigroup.com |
Facebook: www.facebook.com/citi | LinkedIn: www.linkedin.com/company/citi.

*https://www.bankrate.com/banking/biggest-banks-in-america/

Media

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LETTER SUBMITTED BY CONSUMER REPORTS

Consumer Reports

May 4, 2022

U.S. Senate Committee on Banking, Housing, and Urban Affairs
Subcommittee on Financial Institutions and Consumer Protection
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Examining Overdraft Fees and Their Effects on Working Families

Consumer Reports appreciates the Senate Committee on Banking, Housing, and Urban Affairs holding a hearing to examine overdraft fees. We write today to express our concern regarding overdraft fees, which penalize low and moderate income consumers with excessive charges for not having enough money in their accounts. **We urge the Committee to protect financially vulnerable consumers and rein-in overdraft fees by passing S.2677, the Stop Overdraft Profiteering Act.**

Overdraft services are effectively short-term lending programs with extremely high interest rates, as banks provide short-term liquidity for overdrawn transactions in exchange for a fee.[1] The Consumer Financial Protection Bureau has stated that "put in lending terms, if a consumer borrowed $24 for three days and paid the median overdraft fee of $34, such a loan would carry a 17,000 percent annual percentage rate (APR)."[2] Only eight percent of customers incur almost 75% of the revenue of all overdraft fees,[3] and the vast majority of overdraft revenue comes from a relatively small percentage of consumers who struggle to keep positive checking account balances.[4]

More must be done to protect consumers from excessive overdraft penalties. A number of major banks have reduced or eliminated overdraft fees, and as research shows, a large majority of

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[1] In 2014, the Consumer Financial Protection Bureau found that "in the case of debit card transactions, the median amount that leads to an overdraft fee is $24 and the median amount of a transaction that leads to an overdraft fee for all types of debits is $50. Most consumers who overdraft bring their accounts positive quickly, with more than half becoming positive within three days and 76 percent within one week." Overdraft fees are typically a flat fee rarely charged in relation to the amount overdrawn, and the average fee is $35. Consumer Financial Protection Bureau, *CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges* 1 (2014) available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/

[2] Ibid.

[3] Consumer Financial Protection Bureau, *Data Point: Frequent Overdrafters* 5 (2017) available at https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf

[4] Consumer Financial Protection Bureau, (2014)

consumers (68%) would prefer to have their overdrawn transaction denied at no expense to them, rather than pay a $35 fee.[5] Additionally the rise of online banks, many with fee-less deposit accounts, provide consumers with alternatives to traditional fee-based overdraft programs. Despite all of this, the average overdraft fee continues to increase year over year.[6] For these reasons, banks that continue to charge overdraft fees are both behind industry trends and neglectful of consumer sentiment, and should eliminate overdraft fees altogether.

Consumer Reports strongly urges the Senate Committee on Banking, Housing, and Urban Affairs to pass S.2677, the Stop Overdraft Profiteering Act of 2021, which limits the number of overdraft fees that can be charged each month and year, requires banks to post transactions so that overdraft fees are minimized, and requires overdraft fees to be proportional to the cost of covering the overdrawn transaction. Furthermore, we applaud and support any effort to strengthen, not weaken, consumer protections against the abusive nature of overdraft programs.

Respectfully submitted,

Syed Ejaz
Policy Analyst
Consumer Reports

[5] The Pew Charitable Trusts, *Overdrawn: Persistent Confusion About Bank Overdraft Practices*, (2014) 10, available at: https://www.pewtrusts.org/-/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf

[6] Bankrate, *Survey: Free checking accounts on the rise as total ATM fees fall*, (2021) available at https://www.bankrate.com/banking/checking/checking-account-survey/#overdraft

LETTER SUBMITTED BY CUNA

Credit Union National Association CUNA

National Association of Federally-Insured Credit Unions NAFCU

May 3, 2022

The Honorable Raphael Warnock
Chairman
Financial Institutions and Consumer Protection Subcommittee
Senate Banking Committee
United States Senate
Washington, DC 20510

The Honorable Thom Tillis
Ranking Member
Financial Institutions and Consumer Protection Subcommittee
Senate Banking Committee
United States Senate
Washington, DC 20510

Dear Chairman Warnock and Ranking Member Tillis,

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, "Examining Overdraft Fees and Their Effects on Working Families." 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 their liquidity needs. When fully in compliance with applicable laws and regulations, overdraft protection

Credit Union National Association

National Association of Federally-Insured Credit Unions

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 Subcommittee's hearing.

Sincerely,

Jim Nussle
President & CEO
Credit Union National Association

B. Dan Berger
President & CEO
National Association of Federally-Insured Credit Unions

LETTER SUBMITTED BY DOUBLECHECK

DoubleCheck

VIA ELECTRONIC SUBMISSION

May 4, 2022

The Honorable Raphael Warnock
Chairman
Subcommittee on Financial Institutions
and Consumer Protection
U.S. Senate Committee on Banking
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
Ranking Member
Subcommittee on Financial Institutions
and Consumer Protection
U.S. Senate Committee on Banking
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Warnock and Ranking Member Tillis:

DoubleCheck Solutions ("DoubleCheck") appreciates the opportunity to submit a letter for the record for the Senate Committee on Banking, Housing, and Urban Affairs' Subcommittee on Financial Institutions and Consumer Protection's hearing "Examining Overdraft Fees and Their Effects on Working Families." As the committee considers increased protections for consumers, it is critical that any new regulations empower bank and credit union customers to take control of their finances in the most up front, transparent and fair way possible. To do that, financial institutions need to look beyond simply overhauling overdraft fees to re-examine the value that customer-centric programs, like the platform provided by DoubleCheck, deliver.

As a company that provides consumers with the ability to manage their overdraft and non-sufficient fund ("NSF") events, we see firsthand the significant impact these situations can have on their finances, as well as the drivers of NSF and overdraft events. Eighty-three percent of customers who use DoubleCheck, which notifies customers within the typical 24-hour return window that they have a pending overdraft or NSF problem, paid with their available balance; they simply needed more time for their deposits to clear. Thus, putting the customer in control of their financial wellbeing allows them to have the transparency, flexibility, power, and insight to make the right decisions for them.

About DoubleCheck Solutions

The financial services industry is evolving, over time, to best serve the needs of consumers and small businesses. Unfortunately, the pace of this change can often be slow in an industry as complex and diverse as the banking sector. It is this tenet upon which DoubleCheck was founded: the entrenched and outdated NSF and overdraft practices of banks and credit unions have not historically allowed customers to control what happens when they encounter a scenario in which they do not have adequate funds to cover an expense. The Consumer Financial Protection Bureau ("CFPB") rightfully notes in its request for information on "junk fees," these fees can add up and pose significant costs for consumers, especially those who are already

financially challenged.[1] To pacify complaints about these fees, some financial institutions have reduced or eliminated overdraft fees, or even done away with overdraft programs altogether.

However, consumers deserve transparency and control when it comes to their finances. Simply eliminating overdraft programs does not put the consumer in control of resolving overdraft and NSF fees before they suffer negative consequences or provide them with the transparency to rectify their insufficient balance before any funds are returned. By enabling consumers to review transactions and adjust declined and returned items, financial institutions can help minimize the damaging ripple effect of declined payments and truly take up the regulatory cause of consumer empowerment.

The Overdraft Problem

To date, the overdraft debate has focused on fees. When a customer opts into an overdraft program provided by their financial institution, they are not made aware of the shortage in their account, or the fees they will be assessed, until *after* their financial institution decides which items were paid by their overdraft policy and which were declined. For some consumers and small businesses, this may mean having to pay multiple NSF and overdraft fees in a single day in addition to finding funds to add to their account to bring the balance back to positive. Otherwise, the balance owed will be subtracted from their next deposit. If the customer does not bring their balance above zero, the bank may close their account and transfer an unpaid balance to a collection agency. Clearly, this is not in the best interest of the consumer.

In recent months, the growth in offerings from challenger institutions, combined with more attention on this space by regulators and policymakers, has led to announcements from some large financial institutions of their intention to eliminate overdraft fees. While encouraging, the offerings are inconsistent and do not address the real issue for their customers.

The "no fee" overdraft offerings that challenger institutions have been focused on have added more features and flexibility for their customers. They allow customers to overdraw their accounts up to a certain dollar amount, which can vary from $10 to $100, depending on the institution, without incurring a fee. Additionally, some are beginning to provide a flexible window in which customers can get their balance back to zero without penalty. Traditional banks have started to replicate this strategy, from offering lines of credit for overdrafts based on the customer's past checking account behavior to reordering the way that charges are posted in an effort to minimize NSF exposure.

While these practices are a step in the right direction that attempt to put the customer in control of how they interact with their finances in a NSF situation, there are attached stipulations on these "no fee" benefits. The implementing banks only provide these benefits to certain accounts, leaving them out of the reach of many consumers who would most benefit from them. Some require monthly deposit minimums while others require a linked checking or savings account. Additionally, most charge a fee for the "no overdraft fee" account, cancelling out the intended purpose of the incentive.

[1] Consumer Financial Protection Bureau (January 2022). Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees. Retrieved April 29, 2022 from https://www.consumerfinance.gov/about-us-newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/.

Thus, today's "no fee" overdraft programs do not address the underlying reason that poicymakers may view some overdraft practices as predatory – the lack of transparency and customer control. Regulations currently only mandate that consumers "opt in" to overdraft protections, which is typically offered when the consumer first opens their account. The consumer is therefore not given any control or choice when they actually encounter an overdraft scenario, which may be years after they opened their account. Most financial institutions only alert customers *after* either a payment is rejected or an overdraft fee is assessed, when it is too late to react. Eliminating overdraft fees does not provide consumers any way to resolve overdraft transactions and NSF fees before they suffer negative consequences. They have only addressed how and when they charge for them.

Unintended Consequences of Overdraft and NSF Fee Elimination

For the most financially at-risk consumers, mounting overdraft fees could limit their ability to access the mainstream financial services system, forcing them to resort to predatory lending products to cover their day-to-day expenses. According to the Financial Health Network's 2022 "FinHealth Spend Report," financially vulnerable and financially coping Americans paid nearly $12 billion in overdraft fees in 2020 alone.[2] Regardless of how much a financial institution charges for its NSF or overdraft fees, the fact remains that every transaction posted to an account that has insufficient funds may be returned, thus subjecting the consumer to even more financial consequences, including late fees and damage to their reputation and their credit. This is the opposite of what Congress and financial regulators are looking to achieve.

Additionally, the lack of transparency that banks and financial institutions provide to their customers does not offer them the ability to rectify their overdraft situation before payments are returned. Customers still cannot make any changes to the decisions that their institution makes about which transactions are ultimately paid and which are not. While a financial institution may impose its own transaction ordering framework on an overdrafted account, only the customer will know which of the transactions are essential and which they would be comfortable having returned.

The only solution to this problem is to fully empower consumers and small businesses alike to take control of their finances in the most upfront, transparent, and fair way possible. This means that solutions need to be scalable and easy to implement, or they will never reach the populations that need them most or permeate through the thousands of financial institutions and credit unions with which consumers and small businesses across the country interact for access to the financial services system.

A Customer-Centric Solution

Working in conjunction with banks and credit unions, DoubleCheck notifies customers via text or email when they have a negative balance and transactions are being paid by overdraft or are set to be returned. Customers can log into a portal, or contact customer support, to review recent transactions and see the amount of time they have to remedy the situation. They are then presented with a dashboard that enables them to see which transactions have been impacted and reprioritize the items they want paid or returned. If the customer doesn't want any transactions to bounce, but

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[2] Financial Health Network (April 2022). FinHealth Spend Report 2022. Retrieved April 29, 2022, from https://finhealthnetwork.org/research/finhealth-spend-report-2022/.

also wishes to avoid paying any late fees or third-party fees, DoubleCheck provides alternative payment options including credit cards, Venmo, PayPal and even same-day cash deposits.

The most recent DoubleCheck data shows that 83 percent of customers who use DoubleCheck paid with their available balance. This means that the extra time DoubleCheck provides these customers to address their NSF situation enables them to utilize pending deposits, such as their paychecks. DoubleCheck notifies customers within the typical 24-hour return window that they have a pending overdraft or NSF problem, thus putting control of financial decisions in the customer's hands.

By shifting control of overdraft management from financial institutions to consumers and small businesses, customers may avoid disruptive bounced payments for critical transactions, like rent and utilities. It also helps them avoid late fees and other third-party fees, as well as any negative markets on their credit report so they can keep their reputation intact.

As it considers how to address the NSF and overdraft markets, we would respectfully suggest that Congress make clear that customer-centric models that put the consumer or small business in control of how a NSF or overdraft situation is managed, like the one that DoubleCheck offers, should be encouraged. Legislative support for giving consumers full transparency and control of handling an overdraft situation would significantly expedite the financial services industry's move towards a more customer-centric model, which will be critical for the thousands of banks and credit unions across the country that cannot simply eliminate fees while providing overdraft protection for their customers.

On behalf of DoubleCheck Solutions, thank you for your efforts to put consumers in control of their finances.

Sincerely,

Joel Schwartz
Founder and Co-Chief Executive Officer

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LETTER SUBMITTED BY GUSTO

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Submitted Electronically

May 4, 2022

The Honorable Raphael Warnock (D-GA)
Chairman
Senate Banking Committee
Subcommittee on Financial Institutions and Consumer Protection

The Honorable Thom Tillis (R-NC)
Ranking Member
Senate Banking Committee
Subcommittee on Financial Institutions and Consumer Protection

Chairman Warnock and Ranking Member Tillis,

We are writing to you today regarding the Subcommittee on Financial Institution and Consumer Protection's hearing entitled "Examining Overdraft Fees and Their Effects on Working Families."

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 health 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:

- An affordable and fully transparent alternative to high-cost lending allowing consumers to improve their financial health and meet short-term, small dollar needs.

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- 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 for 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 it is structured as a consumer loan. Gusto Cashout is a responsible alternative to payday loans, overdraft, and other high cost credit products. 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. 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, iit 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).
- 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:

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.

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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

STATEMENT SUBMITTED BY ICBA

ICBA
INDEPENDENT COMMUNITY
BANKERS *of* AMERICA®

May 4, 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

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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.

STATEMENT SUBMITTED BY NCLC

1. 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. Consumers must be safe no matter where they bank, and voluntary changes can be undone when the winds change. Congress should pass S. 2677 (Booker), the Stop Overdraft Profiteering Act of 2021 and H.R. 4277 (Maloney), the Overdraft Protection Act of 2021. The CFPB should adopt comprehensive rules to ensure that all consumers are safe from abusive overdraft charges. 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 and overdraft avoidance fees, such as "tips" and inflated expedite charges on nonbank banking apps.

In this statement, we cover:

- The history of overdraft fee abuses (pp. 1-4)
- Recent changes to bank overdraft practices (pp. 4-5)
- Will "tips" become the new overdraft fee? (pp. 5-11)
- Inflated expedite fees on nonbank banking apps that disguise the costs of covering overdrafts (pp. 11-17)
- Recommendations (pp. 17-18)

2. 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 an 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, with no limits at some banks and as many as six $35 fees ($210) even 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

[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

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 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 found ways to manipulate consumers into opting in or had processes that misled consumers. The Pew Charitable Trust found that 68 percent of those who overdrew and incurred 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]

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.

[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

CFPB research in 2017 found that 79% of 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.

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 exile them from the banking system.[9] Other consumers choose to be unbanked out of fear of overdraft and NSF fees.

3. <u>Recent changes to bank overdraft practices</u>

The good news is that the trend towards increasing overdraft fees has begun to turn in the opposite direction. But changes have been uneven and still leave many vulnerable consumers exposed to high overdraft fees.

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 – 231 and counting – offer safe "Bank On" accounts with no overdraft or NSF fees and other terms that meet the requirements of Cities for

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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.

[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/.

Financial Empowerment's National Account Standards.[11] 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 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 the overhead costs of significant brick and mortar 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.

4. <u>Will "tips" become the new fintech overdraft fee?</u>

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

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[11] *See* https://joinbankon.org/accounts/. The National Consumer Law Center works with CFE to certify accounts that meet the standards.
[12] *See* https://www.aba.com/banking-topics/consumer-banking/inclusive-banking/bank-on.
[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.

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 "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:

- 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."[19] But Dave collects "tips" and "donations," and also charges an "Optional Express Fee" of $1.99 to $5.99, which increases as the amount advanced increases.[20]

[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").

[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://dave.com/ (last accessed Mar. 28, 2022)

[20] https://dave.com/terms (last accessed Mar. 30, 2022).

- Chime offers "overdraft fee-free up to $200," comparing the "$0" Chime SpotMe fees to a $34 traditional overdraft fee.[21] But Chime requests tips after it covers an overdraft.[22]
- Current proclaims: "With Overdrive™, overdraft up to $200² without any overdraft fees."[23] But Current collects payments of tips.[24]
- 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."[25]
- 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.[26]
- Earnin offers payday advances in two different forms: as "Cash Out," to "turn every day into payday,"[27] 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.*"[28] 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.[29]

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 impending overdrafts and prod the

21 https://www.chime.com/ (last accessed Mar. 30, 2022).
22 https://www.chime.com/spotme/ (last accessed Apr. 4, 2022).
23 https://current.com/ (last accessed May 3, 2022).
24 https://current.com/overdraft_protection_terms_of_service/ (last accessed May 3, 2022).
25 https://albert.com/instant/ (last accessed Mar. 28, 2022).
26 https://www.moneylion.com/instacash/ (last accessed Mar. 30, 2022).
27 https://www.earnin.com/products/cash-out (last accessed Mar. 30, 2022).
28 https://earnin.com/products/balance-shield (last accessed Mar. 30, 2022). Earnin does not, however, have any connection to payroll or actual earnings.
29 https://earnin.com/products/earnin-express (last accessed Mar. 30, 2022).

consumer to take an advance. But like overdraft credit, they do not provide loan disclosures or comply with lending laws.[30]

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.

Companies can employ strategies to make it difficult not to tip or to make the consumer feel compelled to tip.[31] Default tip amounts are often set in advance and may be difficult to undo.[32] 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,"[33] ignoring the large companies and wealthy hedge fund investors who profit from the "tips."

Earnin users reported having their access to advances restricted if they did not tip enough.[34] Earnin appears to have changed that practice after it became public, but now, Earnin has another way to stop providing overdraft advances to consumers who do not tip. "Balance Shield Cash Outs" automatically advance funds if the balance is below $100.

[30] 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).

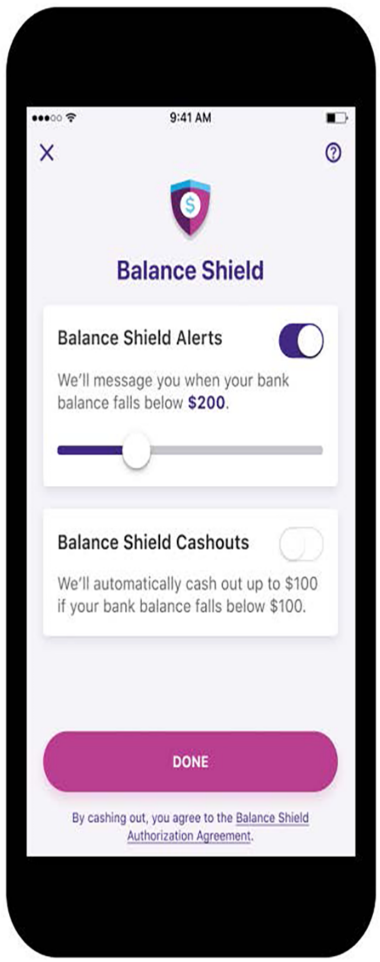
[31] For example, in 2019 Earnin "encouraged users to leave a tip of anywhere between zero and $14 on a $100 weekly loan," and users who didn't leave a tip "appear to have their credit restricted." Kevin Dugan, New York Post, Cash-advance app Earnin gets subpoenaed by NY regulator: source (Mar. 28, 2019). 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).

[32] 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).

[33] https://www.chime.com/spotme/.

[34] Kevin Dugan, *Cash-Advance App Earnin Gets Subpoenaed by NY Regulator: Source*, New York Post, Mar. 28, 2019 ("Earnin encouraged users to leave a tip of anywhere between zero and $14 on a $100 weekly loan. Users who don't leave a tip appear to have their credit restricted. Meanwhile, a $14 tip would equate to a 730-percent APR—nearly 30 times higher than New York's 25 percent cap.").

Get peace of mind with Balance Shield Cash Outs.



But Terms and Conditions state that consumers who do not tip will lose those automatic overdraft advances -- unless they realize that the alerts have been turned off and manually turn them back on after each advance:

> Balance Shield
>
> Allows you to set an alert to have Earnin send you a notification when your Bank Account falls below an amount that you set ($0–$400) to help you monitor your Bank Account's balance. Balance Shield also incorporates Cash Out, by automatically setting a cash out of up to $100 when your Bank Account balance has fallen below $100. Note, that a Balance Shield Cash Out is subject to your available earned wages, your Daily Max and Pay Period Max requirements. You are responsible for monitoring your Daily Max and Pay Period Max to ensure that the Cash Out application of Balance Shield is available to you. We may limit the amount we send you for Balance Shield Cash Out at any given time or over a period of time. We may also decline to offer Balance Shield to you at any time, without prior notice, if we reasonably believe such refusal is necessary or advisable for legal or security reasons, or to protect the Services.
>
> Balance Shield alerts can stay on indefinitely until you turn them off. **There is no fee or charge to use Balance Shield alerts. Generally, Balance Shield Cash Out will need to be turned on manually after each Balance Shield Cash Out, however, setting a voluntary tip ($1.50–$14.50) triggers Earnin to automatically keep Balance Shield Cash Out on even after a Balance Shield Cash Out**. If you choose to enable Balance Shield Cash Out to activate automatically, Balance Shield Cash Out will stay on indefinitely until you turn it off, and will automatically debit your account for the amount and tip you have set. Earnin will send you an annual reminder that Balance Shield is turned on.[35]

This means that, unless the consumer tips, the Balance Shield alert will be turned off if one is sent, and the consumer will have to manually turn it back on. In other words, for consumers who do not tip, the alerts will be turned off for the very consumers who have used them, and Earnin will stop providing advances to those consumers unless they know and remember to manually turn the alert back on each time.

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,"

[35] Earnin, Terms and Privacy (last updated Sept. 22, 2021) (emphasis added).

i.e., that most people will feel compelled to give a tip and recognize actions designed to activate "obligatory giving."[36]

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.

5. **Inflated expedite fees on nonbank banking apps disguise the costs of covering overdrafts**

In addition to "tips," another recent way that nonbank banking apps are disguising the cost of their cash advance overdraft avoidance loans is through inflated expedite fees. As discussed in the previous section, a number of nonbank banking apps have payday loan features that advance funds in order to cover anticipated overdrafts. In addition to "tips," many of these companies collect expedite fees if the consumer wants the money instantly – which they certainly will if they are trying to cover an anticipated overdraft. Moreover, the "standard" delivery time for advances appears in some instances to be deliberately slowed down to push consumers to pay the expedite fee. These apps typically deliver funds for free through standard delivery, from one to five days. But banking apps that include a deposit account do not need to move money through the ACH system to cover an overdraft – it is merely an internal bookkeeping maneuver. Even freestanding cash advance apps that are not linked to a deposit account can normally move funds in one business day – not five days – if they use the ACH system.

The fees for instant delivery appear to be far more than the cost to the provider. Instant delivery can happen through two types of channels. If the consumer has a deposit account with the app provider—as is the case of the nonbank banking apps—"delivery" is likely a mere bookkeeping change with no actual money movement; the provider just increases the balance in the account and makes those funds available. Thus, the cost to the provider is essentially zero.

If funds are delivered to an outside account, the provider likely uses one of the instant delivery channels such as The Clearing House's RTP or Visa Direct. The $1 to $5.99 price of instant

[36] *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.

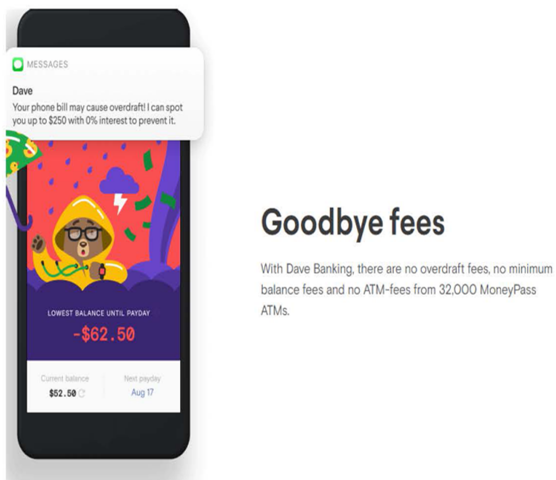
access for consumers severely exceeds the $0.45 cost to for an instant transfer using RTP.[37] The costs of Visa direct and MasterCard Send are likely in a similar range.[38]

Inflated expedite fees mask the cost of the advances. They evade TILA disclosure requirements, leading the providers to disclose 0% APR or no APR at all.

Delivery fees also often vary based on the size of the advance. Yet RTP has a fixed $0.45 fee regardless of the amount sent,[39] and the other instant delivery options likely also do not vary, at least for the range of advances—$20 to around $300—that these apps offer. Thus, there is a particularly strong argument that expedite fees that increase with the amount of credit are disguised finance charges imposed "as an incident to or a condition of the extension of credit."[40]

Many nonbank banking apps have deceptive marketing that implies that overdrafts or advances are free even while most consumers will likely make payments for those services.

Dave's website boasts: "Goodbye fees," showing a picture of a text message warning "Your phone bill may cause overdraft! I can spot you up to $250 with 0% interest to prevent it."[41]



[37] The Clearing House, Simple, Transparent, Uniform Pricing for All Financial Institutions (last visited Apr. 25, 2022).
[38] For example, this article noted that Uber drivers paid $0.50 to get instant access to their pay through Visa Direct. Tom Groenfeldt, Forbes, Visa Direct Is The Engine Behind Zelle and Venmo (Mar. 15, 2019).
[39] *See* The Clearing House, Simple, Transparent, Uniform Pricing for All Financial Institutions (last visited Apr. 25, 2022).
[40] Reg. Z, 12 C.F.R. § 1026.4(a).
[41] https://dave.com/ (last visited May 2, 2002).

But deep in the terms and conditions is language stating that consumers who want their advances quickly will pay an "Express Fee" of $1.99 to $5.99, depending on the amount advanced:[42]

9.2 Express Fees

You may request that Dave expedite disbursement of your Advance by paying an optional fee (the "Express Fee"). While you can generally receive an Advance within three (3) business days depending on processing times, if you choose to pay the Express Fee, we will use a faster delivery method that will deliver the Advance to you within 8 hours. The amount of the Express Fee is determined by the amount of your Advance:

Advance Amount	Optional Express Fee
$5.00 or less	$1.99

$5.01 to $15.00$2.49

$15.01 to $20.00$2.99

$20.01 to $74.99$3.99

$75.00 to $99.99$4.99

$100 to $200.0$5.99

In other words, despite declaring "Goodbye fees" and "0% interest," a $100 advance to cover an overdraft will likely cost $5.99 plus any "tips" the consumer feels compelled to give.

MoneyLion offers "CASH ADVANCES UP TO $250 WITH NO INTEREST,"[43] stating: "Link your checking account to qualify for 0% APR cash advances. No credit check." In addition to tips, MoneyLion charges a "Turbo Fee" if people want their advance faster than "regular delivery." Only by scrolling to the bottom of the Instacash page and opening up the answer to the FAQ on "How much does Instacash cost?" does the consumer see this fee schedule:[44]

[42] Dave, Dave Terms of Use (last visited Apr. 8, 2022).
[43] *See* https://www.moneylion.com/instacash/ (last visited Apr. 8, 2022).
[44] *Id.*

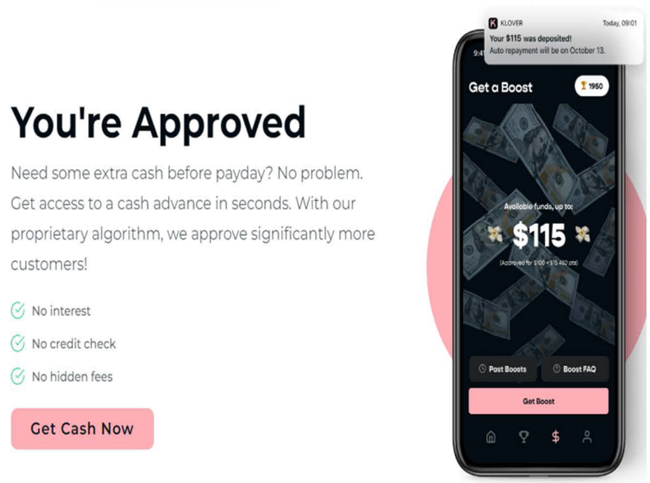
Each time you get an Instacash advance, you can select from these disbursement options, some of which have associated costs:

- Regular delivery (12 – 48 hours) to your RoarMoney account – $0
- Regular delivery (3 – 5 business days) to your external checking account – $0

	Turbo Fee	
Disbursement Amount	RoarMoney account	External debit card
$5 or less	$ 0.99	$ 1.99
$10 to $15	$ 1.49	$ 2.49
$20	$ 1.99	$ 2.99
$25 to $35	$ 2.99	$ 3.99
$40 to $70	$ 3.99	$ 4.99
$75 to $95	$ 4.99	$ 6.49
$100	$ 5.99	$ 7.99

The "regular delivery" times appear to be deliberately slowed down to induce people to choose instant delivery. Delivery to a MoneyLion RoarMoney account is 12 to 48 hours, even though that is an internal move and MoneyLion can probably make those funds available instantly at essentially no cost. Delivery to an external debit card is three to five business days, but that delivery likely takes place through an ACH transfer, which normally takes only one business day.

Other cash advance apps and nonbank bank apps with cash advance features have similarly inflated and varying expedite fees. Klover offers cash advances—which they appear to deny are credit[45]—"in seconds" that have "No interest" and "No hidden fees:"[46]



But in addition to tips and subscription fees, Klover collects expedite fees up to $9.99. Klover states: "While you will generally receive a Balance Boost within three (3) business days depending on processing times, if you choose to pay the Express Fee, the Balance Boost will be delivered to you within 24 hours."[47] Expedite fees are: "Up-to $250, ($9.99); Up-to $50 ($7.49); Up-to$25 ($2.99); Up-to $10 ($1.99)."[48]

Klover makes no mention of its tips or expedite fees in answer to the question "How does Klover make money?"[49]

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[45] The terms and conditions say: "Klover offers a service that provides advances or 'Balance Boost(s)' based on your anticipated income ('Balance Boost Service'). The Balance Boost Service is a non-recourse sale of future wages to Klover." Klover, Klover Terms and Conditions ¶ 6.1 (last visited Apr. 8, 2022). For a discussion of why "non-recourse" arguments do not take credit out of TILA coverage, see *NCLC/CRL EWA Letter to CFPB* at 16–20. For discussions under state law, see National Consumer Law Center, Consumer Credit Regulation § 9.10.4.4.1 (3d ed. 2020), *updated at* library.nclc.org; Comments of National Consumer Law Center & Center for Responsible Lending to California Dept. of Financial Protection & Innovation re: PRO 02-21, Proposed Rulemaking under the California Consumer Financial Protection Law: Earned Wage at 16–20 (Mar. 15, 2021).

[46] *See* https://www.joinklover.com/ (last visited Apr. 8, 2022).

[47] Klover, Klover Terms and Conditions ¶ 6.2 (last visited Apr. 8, 2022).

[48] *Id.* ¶ 6.3.

[49] Klover, FAQs (last visited Apr. 8, 2022).

How does Klover make money? +

Your custom profile enables Klover to show you relevant offers in the form of advertising, to earn or save with our partners, and to gather anonymous market research.

We'll always stay true to our mission of leveraging data to give you access to great financial services.

As described in the tips section, Albert's home page offers advances up to $250 with "No interest. No credit check."[50] The "Learn more" link goes to a page that mentions "a small fee to get your money instantly or get cash within 2–3 days for free."[51] That same page also announces in large type "No hidden fees. Ever." But in smaller type below the page mentions "one small fee"—the amount of which is hidden. Even the terms and conditions (which are difficult to find) do not say what that fee is, only that there is "one-time non-refundable fee if [the cash advance is] made on the same day of the request."[52]

No hidden fees. Ever.

Just one small fee — plus an optional tip — to advance cash instantly. That's it.

Earnin offers a Service called "Lightning Speed" to expedite delivery of its advances, as described in the Terms of Service:

> Lightning Speed
>
> Depending on your bank, by providing us your debit card information, or banking routing number and Bank Account information, you may be able to Cash Out with Lightning Speed, a service that enables funds associated with Cash Outs to be expedited. If Lightning Speed is unavailable to you, you will generally receive your Cash Out within the next 2-3 Banking Days after you request a Cash Out in your Bank Account. Otherwise If [sic] there are no issues you provide us with your debit card information, you should be able to receive your Cash Out within the same Banking Day. **Fees may apply to Lightning Speed in some instances.**[53]

[50] *See* https://albert.com/ (last visited Apr. 8, 2022).
[51] *See* https://albert.com/instant/ (last visited Mar. 28, 2022).
[52] Albert, Albert's Terms of Use (Feb. 10, 2022).
[53] Earnin, Terms and Privacy (last updated Sept. 8, 2021) (emphasis added).

Lightning Speed is required for use of Earnin Express,[54] a deposit account offered by Earnin through Evolve Bank & Trust.[55] While the Earnin Terms of Service state that fees may apply to Lightning Speed, those fees could not be found from a skim of both the Earnin terms[56] and the Evolve terms,[57] and both sets of terms denied charging any fees.

6. Recommendations

We need action to stop overdraft fee abuses, old and new.

Financial institutions should follow the lead of Capital One Bank and Ally Bank and eliminate overdraft fees altogether. They are a relic of a bygone era and only serve to hurt vulnerable consumers.

For institutions that continue to charge overdraft fees, the fees should be strictly regulated and limited. 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 adopt 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:

- Clarify that overdraft coverage is credit and that overdraft fees, beyond 6 fees a year to cover occasional courtesies, are finance charges under TILA and Regulation Z. Additional overdrafts can be covered through affordable overdraft lines of credit or transfers from linked accounts.
- Limit overdraft and NSF fees to one per overdraft episode.
- Use of a debit or ATM card or other access device to access overdraft credit should trigger the protections of the Credit CARD Act, including ability-to-repay rules and the fee harvester limits.
- Limit any overdraft and NSF fees to amounts that are reasonable and proportional to financial institutions' costs in the overdraft coverage.

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[54] *Id.* ("Because Earnin Express requires Lightning Speed, funds from your Earnin Express Account that are to be credited to your Bank Account, will arrive within the same Banking Day.")

[55] "Earnin Express is a new app feature that gives our community an upgraded Cash Out experience. It's a way for you to potentially reach a higher pay period Max and a possibility to receive your paycheck early by routing your paycheck through Earnin." Earnin, What Is Earnin Express and How Does It Work? (last visited Apr. 8, 2022).

[56] Earnin, Terms and Privacy (last updated Sept. 8, 2021) ("There are no fees or costs associated with Earnin Express.").

[57] Earnin, Evolve Bank & Trust Customer Account Terms ("We do not charge any fees for your Accounts. Earnin may charge you fees separate for its Services, pursuant to the Earnin Terms of Service.") (last visited Apr. 8, 2022).

- 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, not just for ATM and debit card transactions, 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.

7. **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 decades-long scourge of overdraft fees and to prevent new evasive forms from taking root. For more information or with questions, please contact Lauren Saunders at lsaunders@nclc.org.

STATEMENT SUBMITTED BY ABA

Statement for the Record

On Behalf of the

American Bankers Association

Before the

Subcommittee on Financial Institutions and Consumer Protection

of the

U.S. Senate Committee on Banking, Housing, and Urban Affairs

May 4, 2022

Chairman Brown, Ranking Member Toomey, and distinguished Members of the Committee, 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]

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

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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.*

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] as even the Bureau's director, Rohit Chopra, has repeatedly acknowledged.[6] 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.

[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.
[6] *See Consumers First: Semi-Annual Report of the Consumer Fin. Prot. Bureau: Hearing Before the H. Comm. on Fin. Svcs.*, 117 Cong. (2022) (testimony of Rohit Chopra, Dir., Consumer Fin. Prot. Bureau) ("Institutions are starting to compete more aggressively on fees."); *The Consumer Fin. Prot. Bureau's Semi-Annual Report to Cong.: Hearing Before the Sen. Comm. on Banking, Hou., & Urban Affairs*, 117 Cong. (2022) (testimony of Rohit Chopra, Dir., Consumer Fin. Prot. Bureau) ("But what we are seeing is actually banks across the board are starting to compete on this [overdraft products].").

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 products and services such as bank accounts, loans, and credit cards.[7] 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.[8]

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.[9] 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.

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[7] 2022 Morning Consult Survey Data, *supra* note 3, at 1.
[8] *Id.*
[9] 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.

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, and may 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 to prevent banks from offering overdraft protection.[10] 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.[11]

Moreover, statutory and regulatory restrictions can quickly become obsolete as consumer needs and demands, technology, and markets change. 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 Senate, the *Stop Overdraft Profiteering Act of 2021*, would prohibit banks and other depository institutions from charging consumers more than one overdraft fee in a month and more than six overdraft fees in a year, among other provisions.[12] This limit applies to ACH, check, and recurring debit card transactions; the bill prohibits overdraft fees for point-of-sale and ATM transactions. The bill permits a depository institution to charge an overdraft fee for ACH, check, or recurring debit card transactions only if the customer opts in to the overdraft service. 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. As stated above, the bill permits a depository institution to charge an overdraft fee for ACH, check, or recurring debit card transactions only if the customer opts in to the overdraft service. 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.

[10] 2022 Morning Consult Survey Data, *supra* note 3, at 1.
[11] Curinos, *supra* note 2, at 12 & fig. 2.7.
[12] S. 2677, Stop Overdraft Profiteering Act of 2021, 117th Cong. (2021).

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 that customer, 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.[13] They want these transactions paid. Indeed, the 2022 Morning Consult survey found that 74% of consumer customers are happy that their depository institution covered an expense when their account was overdrawn.[14] 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.

Congress Should Direct the CFPB to Study Why Consumers Use and Value Overdraft

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

[13] 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).
[14] 2022 Morning Consult Survey Data, *supra* note 3, at 1.

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;
- 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.[15] This indicates that overdraft provides significant value to consumers.[16]

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

[15] Curinos, *supra* note 2, at 8.
[16] 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.

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.[17] 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, 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.[18] 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.[19] 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.

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

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.