

CONSUMER PROTECTION: EXAMINING FEES IN FINANCIAL SERVICES AND RENTAL HOUSING

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

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ON

EXAMINING FEES IN FINANCIAL SERVICES AND RENTAL HOUSING

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C O N T E N T S

THURSDAY, MAY 9, 2024

	Page
Opening statement of Chair Brown	1
Prepared statement	32
Opening statements, comments, or prepared statements of:	
Senator Scott	3
Prepared statement	33

WITNESSES

Adam Rust, Director of Financial Services, Consumer Federation of America ..	5
Prepared statement	35
Responses to written questions of:	
Senator Fetterman	84
Karen Madry, President and Chief Executive Officer, Afena Federal Credit Union	7
Prepared statement	58
Santiago Sueiro, Senior Policy Analyst, UnidosUS	8
Prepared statement	68
Responses to written questions of:	
Chair Brown	94

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Statement submitted by ABA	95
Statement submitted by BPI	110
Letter submitted by CBA	113
Letter submitted by DCUC	118
Letter submitted by NAA/NMHC	120

CONSUMER PROTECTION: EXAMINING FEES IN FINANCIAL SERVICES AND RENTAL HOUSING

THURSDAY, MAY 9, 2024

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10 a.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chair of the Committee, presiding.

OPENING STATEMENT OF CHAIR SHERROD BROWN

Chair BROWN. The Senate Committee on Banking, Housing, and Urban Affairs comes to order.

Senator Scott, welcome. The three witnesses, welcome.

Costs are far too high for Americans. Corporations are finding more and more ways to raise those costs to boost their own profits. We have talked about how every time Americans go to a grocery store they pay for corporate stock buybacks and executive bonuses. Last week, we looked at how companies use the latest technologies to jack up prices for consumers.

This week, we look at junk fees. These are surprise—although not that much of a surprise anymore—often last-minute charges that drive up the cost of products, have no justification or connection to anything other than their quest for profits.

Think about that hotel room you booked that has a bunch of mysterious charges at the end.

Or that time you paid your credit card bill over the phone, so you wouldn't be late, but were charged a convenience fee. The only thing that fee is convenient for is the bank's bottom line. Or let's say you're looking for an apartment and you finally find one with affordable rent. But when you get a look at the lease, you realize that, between the maintenance fee and the trash fee and the mysterious convenience fee, the actual rent you'll be charged each month is out of your budget now.

These hidden add-ons, surcharges, fees, they're all junk fees. They're extra costs that inflate the price you pay, but add no real value. They're often hidden. They're only disclosed when it's time to pay.

Consumers know what they can afford. That's why we all shop based on price. But when the real price is hidden through undisclosed junk fees, how are consumers supposed to find the lowest price? The answer is they often can't.

We hear a lot about personal responsibility and consumer financial literacy in this Committee, but no amount of financial education is going to protect someone from a tactic that's meant to purposely hide the real purpose of a product or service. They hide the price. That's the whole point.

Junk fees make a mockery of free and fair markets. Thirty-two dollars here, \$45 dollars there, sprinkle in a \$10 service fee. Before you know it, a product you thought was the most affordable option actually is the most expensive.

Without junk fees, consumers would keep more of their hard-earned money. They would be able to better find the lowest price, which is how you really should promote competition to bring costs down.

That's why the CFPB has taken long-overdue steps to reduce costs and fees and make them more transparent.

CFPB took a major step toward reducing costs for consumers when it issued its credit card late fee rule. Credit card late fees are the most costly and frequently applied junk fee. According to one report, one in five adult Americans, an estimated 52 million people, paid a credit card late fee last year.

By law, credit card late fees are supposed to be reasonable and proportional—that's what the law says, "reasonable and proportional"—to the cost that companies incur for late payment. So, be clear, there are massive trillion-dollar Wall Street companies. The idea that your missing your payment due date by a day or two is imposing some huge cost on the credit card company is just patently ridiculous.

Sure enough, CFPB found that credit card companies are charging consumers more than five times their cost. By 2022, that meant credit card companies charged consumers \$14.5 billion in late fees. That's up \$3 billion over the previous year, and who knows what next year will be?

The new action by the CFPB will lower credit card late fees that the largest credit card issuers can charge down to just \$8—if it stands. This will save Americans more than \$10 billion in fees each year. Of course—of course—the biggest banks oppose it.

They trot out the same old complaints we always hear every time anyone tries to do anything that might just cut into Wall Street profits just even a little bit. They whined in 2009 when we passed the Credit Act—or excuse me—we passed the CARD Act to lower some fees and increase transparency.

Surprise, surprise, the sky didn't fall. Consumer still have access to credit. And, of course, credit card companies still make billions in profits.

Of course, it's not just credit card late fees. Junk fees pile on top of all sorts of services and products. CFPB found that some auto loan services charge \$1,000 in repossession fees, almost three times the average repossession cost. Unsurprisingly, some owners never recover their cars because \$1,000 is an amount many working families cannot afford out of the blue.

Rental housing. Junk fees that are added to the advertised rent can make the actual rent paid unaffordable. We've seen cases where the advertised rent grows hundreds of dollars a month once all the fees were added on top of the rent—application fees, utility

deposits, trash fees, fees for the—a young man in my office pays a fee for the honor of paying his rent. Fee after fee after fee after fee.

Imagine a family getting approved for a place they think they can afford, but, then, getting several hundred dollars of surprise—surprise—added-on fees and surprise add-on fees when they go to sign their lease. Most renters can't afford these massive price increases, but they may not have an option once they have paid all the upfront costs and set their move-in date.

Be clear, the entire point of these fees is to hide the true cost. They could just list their rent for what it is, but they don't, because they want to make it impossible for families to actually, as they survey where they want to move, to actually find the lowest rent.

It's not a free, fair market. It's a rigged system. We need to continue working to expose and crack down on those fees that are raising costs on Americans to push already high corporate profits even higher. We need to defend the CFPB's work that has refunded \$260 million to consumers for unlawful junk fees—already saved that money and will save consumers billions in the future. Corporations raising these prices have armies of lobbyists to fight for them. At the beginning, I said people, when they go into the grocery store to shop, they're paying for stock buybacks and bonuses for executives—not too different in this world, in the banking world, in the apartment world, and in the car repossession world.

Our job is to stand up to those corporate lobbyists who work for everyone else, so that consumers can actually keep their hard-earned money. Senator Scott.

OPENING STATEMENT OF SENATOR TIM SCOTT

Senator SCOTT. Thank you, Mr. Chairman. Thank you to the witnesses for being with us today. At last week's hearing, we heard from my colleagues on the other side of the aisle that the high prices Americans are paying, as they struggle to put food on the table and face mounting debt, are the result of greedflation and shrinkflation. And today is a similar story. This time, the bogeyman is so-called junk fees and these fees are to blame for the obvious economic pain Americans are feeling—not skyrocketing inflation, not increasing global instability, and certainly not the slush fund known as the Inflation Reduction Act. Clearly, there's no shortage of fingerpointing for the failure of Bidenomics or, as I like to call it, "Brokenomics," because that's what's happening to the average American family.

My Democratic colleagues and this Administration have deployed a herd of scapegoats to deflect blame for the economic harm they have brought upon American households. Instead of taking responsibility for the real consequences of unchecked spending and increased regulation across the economy, the Biden administration would rather throw a towel over the mirror and say, "Not me."

Sure, it might be easy or even politically expedient to slap a label of "junk" or "excessive" on additional costs for legitimate products and services, in an effort to villainize business in America, so that they, themselves, do not have to face the reality that Bidenomics/Brokenomics is causing devastation after devastation after devastation upon the shoulders of the American people.

But it long past time that Democrats stop playing political games with price controls and trying to micromanage the business operations, especially when the real outcome of these feel-good gains is reducing access to credit and limiting economic opportunity for those who need it most.

That's why I introduced a CRA resolution to overturn the CFPB's credit card penalty fee rule. Let's be clear about what this rule will mean for American families.

It will result in lower credit limits and higher interest rates for borrowers.

It will result in new fees for services that are currently provided free of charge.

Finally, and perhaps worst of all, this rule will cutoff access to credit and stymie financial inclusion for the families who need it most.

Sadly, I wasn't surprised when the CFPB finalized the credit card penalty fee just days before the President's State of the Union Address. That's the politics of this Administration. Actions that sound good as talking points, just like the billions of dollars of student loan forgiveness, but they are truly divorced from economic reality.

And it's not just the financial sector; it's everything everywhere all at once. That's what astounds me—this Administration's rhetorical hypocrisy.

The White House has claimed that a "junk fee" is a charge designed either to confuse or deceive consumers. Ironically enough, two of the recent targets within the Committee's jurisdiction—overdraft and credit card late fees—are two of the most highly regulated and transparent business practices in any industry. The credit card late fees and overdraft fees we are discussing here today are, in fact, not illegal and are heavily regulated.

And while we are on the subject of regulation, if Democrats actually wanted to address the junk fees that American families are facing, a good place to start would be the enormous costs that consumers are paying due to the Biden administration's regulatory onslaught. It's an albatross around every family trying to make ends meet.

Since he took office, the total cost of President Biden's regulatory nightmare—the mountain of red tape—is \$1.37 trillion. That's 1.37 trillion—"T" as in Tom—dollars paid by everyday families in the form of higher prices because of these new regulations.

This contributes to the increased cost for food, housing, vehicles, and all the other basics a family must have just to survive—and this happens while inflation is raging.

If my friends on the other side of the aisle were truly interested in helping the American family, the American people, this hearing would be about finding solutions to tame the inflation that has increased the cost of goods by almost 20 percent since President Biden took office. We should be discussing how real average hourly wages have decreased under this Administration. Remember, 52 paychecks in a row where inflation was higher than wage increases.

And we would be discussing how President Biden has promised to let the TCJA, the Tax Cuts and Jobs Act, expire next year,

which would result in a \$2.5 trillion tax increase on the American family. But that's not the conversation we're having today, unfortunately.

In closing, it is my hope that we will hear today how misguided the Administration's attempts are to push the financial services industry into only offering one-size-fits-all products, when we should be really focusing on providing solutions to the financial hardships facing Americans.

And let me just close with one example. Everyone I know hates paying a late fee, but the late fee is oftentimes the one thing that encourages us to take our bills more seriously. Because, ultimately, a late fee represents a late payment, and if you are late on your payment, ultimately, your credit score goes down, which means that the cost of borrowing goes up—undeniably.

If we really want to save Americans more money, we should focus not on these fees that encourage better payment history—so your credit score goes up and your interest rates go down—we should focus on the cost of gas, up 40 percent; we should focus on the cost of energy, up 30 percent; we should focus on the cost of food, up 20 percent—not on late fees.

Chair BROWN. Thank you, Senator Scott.

Three witnesses today.

The first witness, Adam Rust, Director of Financial Services, the Consumer Federation of America. Welcome, Mr. Rust.

Mr. RUST. Thank you.

Chair BROWN. Hang on 1 second. Sorry. Sorry.

Our next witness is Ms. Karen Madry, President and CEO of Afena Federal Credit Union, headquartered in Marion, Indiana.

Welcome, Ms. Madry.

Our final witness is Mr. Santiago Sueiro. He is Senior Policy Analyst on the Economic Policy Team at UnidosUS.

Mr. Rust, now, please.

STATEMENT OF ADAM RUST, DIRECTOR OF FINANCIAL SERVICES, CONSUMER FEDERATION OF AMERICA

Mr. RUST. Thank you. Thank you for the opportunity to testify on this important issue today.

My name is Adam Rust. I am the Director of Financial Services at the Consumer Federation of America. CFA is an association of approximately 250 groups from across the United States. Founded in 1968, our mission is to advance the consumer interests through research, advocacy, and education.

Today, I'm going to talk about junk fees and explain their harm on consumers and the economy. And I'm going to talk about the Consumer Financial Protection Bureau's important work to address these issues.

You know, at the heart of it, junk fees are about power. They're about the imbalance between big banks and smaller consumers. Large banks with tens of billions of dollars in their boardrooms, or hundreds of billions or trillions in private equity, and corporate landlords with millions of single-family homes are talking about how junk fees are going to be what brings home an earnings beat for them—to hear on the talk radio shows “booyah” on earnings—but, for consumers in their dining rooms, junk fees are an entirely

different matter. Junk fees are what is going to keep them from bringing home groceries this year.

Today, renters are focusing on housing increases. Anyone who has more month than paycheck knows how harmful these junk fees are to their households.

So, this is a zero-sum game in the end and the costs are high. Junk fees, including credit card late fees, amounted to \$14.5 billion last year, in overdraft and NSF, \$7.7 billion.

I want to make a few top-line points.

First, in the credit card late fees rule and in the overdraft proposal, the CFPB has tailored regulations that focus on the largest financial institutions only. Only card issuers with more than 1 million active accounts will be affected by the rule—effectively, between 30 and 35 large issuers out of more than 4,000 institutions that issue credit cards. And it's similarly with the overdraft proposal; it only applies to institutions with more than \$10 billion in assets.

To critics who contend that disclosures are enough, I say, no, the honest truth is, and we need to understand, that credit cards are marketed based on rewards—images of beach vacations and celebrity spokespersons. And the penalty fees are buried in fine print.

And it's the same way with overdraft. No one shops for a bank account with the intention of failing to use the service in a way that meets their goals. They're caught by surprise. Too often, consumers do use overdraft, but it's by accident. CFPB research reveals that many consumers who have experienced an overdraft fee have an alternative source of credit.

And I want to underscore that the CFPB has been deliberate about doing research to understand the credit card market. Congress instructed the CFPB to ensure that penalty fees are reasonable and proportional to cost. By closing these loopholes, the CFPB is living up to its mission to put consumer first. Additionally, we believe that reliance on penalty fees is, ultimately, something that undermines trust in the banking system.

Nine percent of account holders pay 80 percent of overdraft fees. It saddens me that our payment system has been designed in such a way that the least well-off pay an outsized share of the overall cost.

And we must remember that, because they have been granted a charter, financial institutions have received a privilege, and they have a responsibility with that. And we should also remember that the Federal Reserve's payment system is something that comes with that. The privileges of the charter to meet the convenience and needs of communities where they do business is an essential truth to remember. But penalty fees undermine true financial inclusion.

In the midst of an affordable housing crisis, renters today, typically, face a dizzying array of fees. Those fees render safe and decent housing one step further away—because rent is already high and these late fees only add to the cost.

You know, the simple lease of 20 years ago has been replaced by a new structure, where rent is only one of the costs. Fees are partitioned and consumers may not know all of the fees at the time that

they consider filling out an application. And an application could cost more than \$100 for each applicant on the lease.

There can be fees to sign the lease; fees to move in; fees to move out; fees to pay rent electronically; fees to remove a coresident from the lease. And often, essential services that are included also have their own fees, such as trash fees, fees to receive mail. And these are fees that should be included in the all-in cost upfront. I just want to say that the stakes are high and these problems are actually interdependent. When junk fees trap residents in an unaffordable lease, they may be vulnerable to eviction. And penalty fees, particularly ones that are a surprise and may come just before the rent is due, are perhaps particularly the most dangerous ones that could lead to evictions.

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

Chair BROWN. Thank you, Mr. Rust. Ms. Madry, welcome.

**STATEMENT OF KAREN MADRY, PRESIDENT AND CHIEF
EXECUTIVE OFFICER, AFENA FEDERAL CREDIT UNION**

Ms. MADRY. Good morning, Chairman Brown, Ranking Member Scott, and the other Members of the Committee.

My name is Karen Madry, and I am the President and CEO of Afena Federal Credit Union, located in Marion, Indiana.

Afena is a federally chartered credit union with \$99 million in assets, three branches, and we serve just over 8,000 members.

Afena's mission is to help families who are financially vulnerable to achieve financial wealth and endure a legacy. We do not exist just to make profits. We are very focused on serving the needs of our community. First, I'd like to address the term "junk fees." "Junk fees" is a made-up word and it is not in statute. We heard a lot of comments about junk fees in various industries. I would argue that, in the financial services market, that those fees differ. Credit union fee programs are regulated by Federal and State government, and the reduction of fee income would, ultimately, result in the reduction of services to our members. I can also share that, in the credit union space, data shows that fee income is at a 32-year low. The CFPB's actions really want to impact overdraft protection. They would make it seem that this is a predatory way that we serve our members. My members would argue that they are paying for a service that is valuable to them.

Overdraft protection provides a lifeline for my members and it gives them peace of mind to know that, when their paycheck cannot stretch and meet their needs, that we will cover a charge to help them to buy gas or put food on their table.

To participate in an overdraft program is a choice. It is one that our members make, understanding what it is and how it works. We at our credit union make sure that we educate our members on overdraft protection and teach them how to use it responsibly. We disclose everything to our members upfront, and it is not a rush program and none of my members will tell you that they were forced to participate in such a program. Now, as a \$100 million credit union, I recognize that I am exempt from the rules of the CFPB. However, there will be a trickle-down effect. Because if larger institutions are forced to lower or cut their fees, my members

will expect me to do the same. And a reduction in fees would mean a reduction in the services that I am able to provide.

The final rule on credit card late fees also is for larger institutions. However, similar to overdraft courtesy pay programs, it will have a negative impact on my institution, regardless of the fact that I'm exempt. The \$8 fee is not enough to cover the cost of collecting on a credit card once that credit card becomes delinquent.

Again, those fees are fully disclosed to our members prior to them receiving their credit card and at the time of application. An \$8 fee is not enough to encourage responsible behaviors from our members. If they have a choice to pay an \$8 late fee versus a higher late fee charge by someone else, they will not pay our card and cover the bill that has the higher late fee penalty. I would also argue that Government agencies and entities charge a late fee that is much higher than \$8.

So, the biggest concern for us is safety and soundness. As Senator Brown pointed out, if our members become late, it is reported on their credit bureau as such. It demises their ability to get credit in the future and it will also cause financial institutions to tighten up on their credit standards.

So, in conclusion, I'd like to say that I hope you understand that these regulations pose a substantial risk to small credit unions like mine, as well as to my members and the communities that we serve. I am asking Congress and regulators to take action and do something to stop this before it's too late.

Thank you for inviting me here to be a witness today and testify and speak on this issue. And I welcome any questions.

Chair BROWN. Thank you, Ms. Madry, from my neighboring State of Indiana.

Mr. Sueiro, welcome.

STATEMENT OF SANTIAGO SUEIRO, SENIOR POLICY ANALYST, UNIDOSUS

Mr. SUEIRO. Good morning. Thank you, Chairman Brown. Thank you to the Committee staff for inviting me to be here today.

I am Santiago Sueiro, Senior Policy Analyst at UnidosUS. We're the largest Hispanic civil rights and advocacy organization in the country. We partner with 300 affiliates from Ohio to South Carolina, to Texas, and Florida. Our affiliates are community organizations that serve Latinos.

Working class people, people of color, and Latinos are experiencing mixed results in our economy. The good news is that unemployment is at near historic lows and real wages are rising, even as inflation keeps declining.

On the other hand, too many families continue to face economic difficulties. Poverty, for instance, remains higher than prepandemic levels and skyrocketing housing costs are burdening families.

Wealth and equality also remains a concern, as researchers calculate that fully closing the racial wealth gap for Latinos could take up to 228 years at the current pace.

Developments in the financial system mirror this mixed economic picture. Fees and costs are falling, including for overdraft fees and small-dollar loans. And the number of people who remain unbanked is reaching near historic lows.

However, many challenges remain. Credit card debt is at the highest level ever, and working-class consumers are paying more in late fees than wealthier consumers. Industry progress toward reducing overdraft fees also appears to have stalled. And the most recent studies suggest that the number of people without a bank account is rising. Backsliding on these means that more households will fall into economic hardship or deeper distress.

Efforts to reduce these fees can have a major impact on the financial well-being of working-class consumers. The CFPB's credit card late fees rule, for example, is projected to save consumers more than \$10 billion. There are three major reasons why supporting this rule and others like it is important to making the financial system more equitable.

First, fees are all too common among working-class consumers and people of color. Those in the poorest neighborhoods pay twice as much in total late fees than do those in the wealthy areas. A new forthcoming survey by UnidosUS finds that one in four Latinos have made a credit card late fee in the past year.

Second, fees harm financial health and access to credit, making it harder to get an account out of delinquency and increasing the chances of losing an account. In fact, a large percentage of consumers identify late fees as a barrier to obtaining credit.

And third, late fees do not effectively deter late payment and undermine the lender's relationship with borrowers. Evidence shows that most people who miss a bill payment simply cannot pay because they don't have the funds. Many who are charged a late fee may be facing a decision between paying their rent or paying their credit card bill. The decision there is clear. High late fees are, thus, counterproductive because they pile onto existing debt.

Congress and financial institutions should build upon progress from the past few years by following three principles.

First, policymakers should respect efforts by financial regulators to improve affordability in the marketplace, while supporting innovations to better meet the needs of working-class people. BankOn Certified Accounts are an example of a market solution that improves inclusion, while maintaining safeguards to prevent abusive practices. Others are also developing affordable small-dollar loans and credit card products that save consumers money and improve their finances.

Second, financial institutions should reimagine the relationship between themselves and consumers to promote long-term customer loyalty and financial health. Consumers notice when a financial institution is willing to be flexible with them, and they will, in turn, remain loyal to the financial institution as they grow economically and need other financial products.

Third, democratic structures can make our banking system more equitable. Credit unions, especially CDFIs and MDIs, are examples of community-owned banks that democratize banking policy decisions. Policymakers should cultivate these to reach more people.

Finally, policies that require banks to meet with communities will allow their needs to be voiced where it counts.

Ultimately, investing in working-class people by providing affordable and high-quality products will allow banks and communities to grow together. If we create a banking system built on trust and

loyalty, one that invests in the long-term potential of everyone, we will be a major step closer to creating a more fair, inclusive, and thriving economy.

Thank you and I look forward to your questions.

Chair BROWN. Thank you, Mr. Sueiro.

I'll start with Mr. Rust.

Working families have real budgets they have to stick to. Junk fees do not allow them to know the true cost of a product—making consumers pay more than what they're budgeted for.

Last week, CFPB released a report finding that consumers pay more for products with, shall we say, complex pricing structures.

Mr. Rust, a couple of questions. What are some of the most troubling junk fees you've seen in financial services and in rental housing, and how do these hidden fees affect people's ability to find the lowest price and stifle health competition between businesses?

Mr. RUST. Thank you for your question.

I think the point of complexity cannot be overstated. This is an issue where it becomes difficult to comparison shop because you don't know all of the costs ahead of time.

I do find it stunning to see leases where there are scores of fees added on top of the original rent. That makes it that people could actually apply for an apartment, think it's affordable, receive an invitation to move in, and then, discover that, in fact, it was too expensive.

Credit card late fees, that's \$14.5 billion a year; overdraft fees, similar. And then, just the myriad of fees that people pay at any point in time when they're having a struggle. I think you see this with captive arrangements. I listed about 10 kinds of fees that are also involved, but there are more.

So, I'll stop there.

Chair BROWN. Thank you. And I appreciate your comments about complexity. I appreciate Ms. Madry, the way she runs her credit union. And credit unions, overwhelmingly, in Ohio, I see the same way. They explain to their members better. They keep a simple structure. They really aren't the problem. So, I just wanted to say that in response to her testimony.

Mr. Sueiro, I want to get some facts straight about CFPB's credit card late fee rule. Please answer the following, I guess, four questions with a yes or no:

According to the law, credit card late fees are not meant to generate profits. Yet, on average, they generate profits that are five times greater than relevant costs, is that correct?

Mr. SUEIRO. Yes.

Chair BROWN. OK. Thank you.

Do credit card late fees disproportionately impact consumers with lower credit scores and people in less well-off neighborhoods?

Mr. SUEIRO. Yes.

Chair BROWN. And you made that clear in your testimony. Thanks for repeating it.

Are only the largest credit card issuers covered by the CFPB rule?

Mr. SUEIRO. Yes, with 1 million—you have to have 1 million open accounts.

Chair BROWN. And that's the reason for Ms. Madry's credit union, as most credit unions in Ohio would be exempted.

So, the rule just doesn't apply to small card issuers, correct?

Mr. SUEIRO. Correct, yes.

Chair BROWN. OK. Thank you.

Credit card issuers shouldn't be extracting profits from consumers through late fees, first of all, because it's unfair to consumers; second of all, because these rules are required to be reasonable and proportional to cost. By reducing late fees, it's pretty clear CFPB is ensuring consumers saved over \$10 billion every year.

Back to you, Mr. Rust. On rental junk fees, which is every bit as problematic as is financial services junk fees, in rental housing, they're raising already far too high housing costs. Companies charge renters all kinds of fees—application fees, processing fees, convenience fees, notice fees. And I'm sure you could cite several others. Some renters report even being charged a January fee, a fee for just being in the month of January—unbelievably perhaps.

Mr. Rust, can you explain the types of fees that renters face; the challenges these fees create for renters shopping for a place they can't afford or manage their expenses once they sign their lease?

Mr. RUST. So, thank you.

And to be honest, I can't explain the fees. They seem unexplainable, right? But the truth is that I think it reflects a power imbalance. And I would say that, if we had more housing supply, perhaps landlords wouldn't be attempting to extract these kinds of fees from consumers. But in the moment when there is this vulnerability, they are.

I think the point about comparison shopping, just it is so hard to determine how much you're really going to pay. That doesn't make any sense at all for our economy.

Chair BROWN. OK. Again, that speaks to what Ms. Madry said, that you can comparison shop with her because they make it clear; they're simple. I mean, they're exempt from this rule; I'll point that out, as she acknowledged.

But it makes it that much more complex in the larger institutions that really are the ones that extract, that levy the biggest fees and the most frequent fees, and are the most onerous to moderate-income people and to everybody.

Mr. Sueiro, do you want to add anything onto what Mr. Rust said?

Mr. SUEIRO. Yes. You know, pointing out that, sometimes similar to the rental housing market, and housing in general, when banking, a lot of people are finding themselves without a lot of options. And so, the same dynamic applies here, where if you need an account or you need a loan, or you need a credit card, but you only have one or two options to choose from, you're going to have trouble. You know, you're going to pay what they're going to offer because you need that account. So, it makes it more difficult to comparison shop, and it makes it easier for the financial institution to raise costs.

Chair BROWN. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman.

So much has been said. I love the debate, but I only have 5 minutes. It's so unfortunate.

But let me just ask you a question, Ms. Madry. Reading your story about who you are and the success that you've had, being the CEO of a credit union, you have overcome real obstacles. I wish we had more time for you to tell your story because, honestly, the question that I want to ask deserves the context of not just your position today, but the journey that you've taken to get to your position today.

I lead by my life story and the challenges I've had to overcome from a single parent household mired in poverty, and what that really means for the context of which I'm asking the questions. I think about some of my staffers. Catherine Fuchs, who's last day in the Committee is today, I think about her growing up on a farm, a farm that focuses on vegetables, cucumbers and corn, and the impact that that has on her psyche and the ability to work hard.

And I think about the three stories that we have combined together, and I ask myself, if the CFPB is going to save the average person about \$200 a year, or the concept of the Biden economy on a family of four, \$15,000 a year. When you are in your credit union in Indiana and your members come in and they're complaining about the cost of gas, the cost of food, the cost of energy, do you hear them talking more about the challenges—the \$15,000, the weight of Bidenomics—or do you hear them talking a little bit more about the late fee?

Ms. MADRY. That's a great question.

Every day, we have members come into our credit union and express just how hard it is to make ends meet. One of the things about our credit union is that we do not take a fast-food approach to lending. My lenders will spend anywhere from an hour to 2 hours with a member because we want to listen and understand the struggles that they are facing.

We will do what we can to help them to overcome those challenges, and we do it with empathy. My lenders have training on how to envision themselves walking in our members' shoes. We help them to look at their financial situation and create budgets. And when it's deemed necessary, we provide them with a loan, if that is in their best interest. We do a lot of debt consolidation loans to try to help put them in a better financial position.

So, because we're regulated, because we are limited and capped at an 18 percent interest rate, quite often, my members can borrow money from me at a much more affordable rate. When we consolidate all of their debt and give them one payment to make, it makes it easier for them to manage their finances. It makes them less prone to late fees. The other thing that we do is, when a member comes in and says, "I'm having a hardship," we do a lot of extensions on loans where we will forgive payments for up to 90 days. If they are having problems paying their current loans, we will do modifications. We will look at what they can reasonably afford to pay and rewrite that loan at that loan payment, so that our members can be successful.

As you said, I have lived that life. I wish when I was struggling that there was a bank or a financial institution that was willing to help me better manage my money, so that I could ensure that

my children always had food on their table. That was not always the case. And so, I am committed to making sure the people in the communities that I serve have a wonderful opportunity and know that we are there to walk alongside them and help them through whatever financial challenge they face.

Senator SCOTT. Thank you.

We need more people like you in the financial services industry, without any question. You have introduced Financial Laws 101. The fast-food approach—you don't take the fast-food approach. I love that concept.

Because I'm only the Ranking Member and not the Chairman, he's going to cut me off in a few minutes because I'm going to run out of time.

But I want to talk for just a second about something I call "the law of the tradeoffs." There are no changes to fee structures that don't require a tradeoff. So, if your fees go away, either your interest rates go up, the cost of the product goes up, or the product itself goes away. Yea/nay?

Ms. MADRY. I agree with that. And we have looked at what we would do if the overdraft protection law was passed into regulation. It would mean that we would have to cut our services. It could mean that we would have to lay off staff. I currently employ 36 people in my community. And we would have to move away from this 2-hour approach and say, how can we accomplish things in a shorter period of time?

Senator SCOTT. Thank you very much. I know I'm out of time. Mr. Chairman, I'll just close with this: I know the Chairman is trying to do his best to be as lenient with me as possible.

Chair BROWN. It's a difficult challenge.

[Laughter.]

Senator SCOTT. It is, indeed. And I appreciate his transparency there.

Let me just suggest this: that even though the fees that we're talking about do not apply to your credit union, you said, without any question, that the trickle-down effect will have impact on your credit union.

Thank you very much.

Thank you, Mr. Chairman, for your leniency this morning.

Chair BROWN. Thank you, Senator Scott. Don't try it again next week.

[Laughter.]

Senator SCOTT. I tried not to do it last week.

Chair BROWN. Mr. Tester of Montana is recognized.

Senator TESTER. That's what happens when you run for President; it gets a little longer on the questions and answers, right?

Senator SCOTT. I told Brown that, too. He's gotten very longwinded since he ran for President, yes, sir, I agree with you.

[Laughter.]

Chair BROWN. I did not run for President, Mr. Scott.

[Laughter.]

Senator TESTER. All right. Anything I can do to start some fights, that's good.

Hey, look, housing is a big issue across this country, and Montana has had a housing shortage for years. That's my home State.

It's getting worse. Everywhere we go across the State, one of the first challenges folks mention to me is lack of workforce housing in our State. It's really hurting our economy, quite frankly.

And we're seeing a lot of wealthy individuals and groups come into "the last best place," which is what they call Montana, and buying up these houses. And it's happening with single-family homes, buildings. We've seen examples of it happening with manufactured home communities, where Montanans are really stuck; they own a mobile home that really isn't mobile at all. And these out-of-State investors take advantage by jacking up the rent and jacking up fees on hardworking Montanans and seniors living in sometimes the only affordable stuff left in the State.

On top of jacking up rent, these out-of-State investors often add new fees, basic fees, that have always been included, but now, all of a sudden, they're not. Sewer and water are two. The Chairman talked about others. And they have been long included as part of the rent. OK? And so, what we're seeing is a lot of out-of-staters are making money off of what used to be affordable housing and making it not so affordable anymore.

So, Mr. Rust, just give me some insight on how any additional fees, how increase in fees, how new fees impact folks across the board, but, specifically, in these manufactured home parks where they really don't have a lot of flexibility and they don't have a lot of money.

Mr. RUST. Thank you for that question.

That is such an important thing to remember. From 2015 to 2018, a group of private equity investors bought over 150,000 lots. Again, this is a power imbalance. When a person lives in a manufactured housing community, it's very difficult to move. It might cost \$5,000 to \$10,000 to move. If you can afford that, then it's also difficult to find a place that will take a used manufactured home, because there are fewer and fewer communities that are zoning for these communities. It's true, as you said, that the cost is going up—not just the rent, but also fees are being added onto it.

I think, at the end of the day, this is workforce housing, right? It is working in rural communities, where there are fewer construction crews available. It's housing for seniors. This is a fundamental aspect of something that's happening in the Midwest and the Upper Midwest. And with junk fee, it's just not fair.

Senator TESTER. So, the real question is—I think we can all agree it's not fair. This is workforce housing. This is senior housing. These are folks that are working hard for their money. Some of them are on fixed incomes. And so, the question is, what does Congress do about it?

Mr. RUST. Well, so I'm glad you raised that. There is a bill before Congress that would permit investment in manufactured housing communities, in particular, when resident-owned communities seek to buy homes or nonprofit groups. The challenge they face is that it's very difficult to gather the capital in a short period of time.

And typically, the reason a manufactured housing community is being sold is because there's an infrastructure challenge. So, it becomes very expensive to find the capital and buy a home quickly.

The PRICE Act, which is a bipartisan-supported Act, will provide grant funding to address these issues, and I believe it will become a very important source of reinvestment in communities.

Senator TESTER. So, let me go back to something you just said because I want to clarify that a little bit. Did you say that they're being sold because of infrastructure needs. Or I just want to clarify this for me. I see them being sold because, in our particular case, we've got out-of-staters who are coming into the State that want to change our State, and they see an opportunity to make a quick buck on the back of working people and seniors. And that's exactly what they do.

Mr. RUST. Well, right. The cash-flows available on manufactured housing communities, especially if you're talking about owning the land but not the units, are very certain. They are very guaranteed. There are consultancies out there saying, yes, these individuals will have a hard time moving; this is an opportunity for you to make a lot of money.

Senator TESTER. I appreciate all three of your testimonies and I appreciate what you're doing. I had a question for the credit union lady, but I'm out of time. Unlike the Ranking Member, I do not want to go over.

I yield.

Chair BROWN. Thank you, Senator Tester.

Senator Vance of Ohio is recognized.

Senator VANCE. Thank you, Mr. Chairman. Thanks to you and the Ranking Member.

I think it's important just to sort of note that this entire conversation about late fees, overdraft fees, and so forth, takes place in the context of extraordinarily high interest rates. I'm 39 years old. It's pretty much the worst interest rate environment since I was a toddler, and I, obviously, don't remember anything on interest rates when I was 3 years old.

So, I think we have to sort of be careful here about this particular proposal or, at the very least, appreciate some of its implications.

And, Ms. Madry, I wanted to sort of direct this first question to you. You, obviously, run a small bank, and I appreciate you being here—or I should say a small credit union, right?

Ms. MADRY. Right.

Senator VANCE. Maybe you could just sort of explain how, especially in the context of higher interest rates, what this particular proposal would mean for your ability to offer debt and credit services to sort of people, especially low-income people.

Ms. MADRY. So, in the context of my credit union, first off, we are capped at 18 percent interest rates.

Senator VANCE. Yes.

Ms. MADRY. And we really try very hard to keep our interest rates very low. I'm in a market where it is overbanked and underserved. And so, I have extreme market pressures to have low rates in order to attract borrowers. And we also, as a credit union, we believe in giving profits back to our members.

Senator VANCE. Sure.

Ms. MADRY. So, liquidity is tight. So, I am paying higher rates on my members' deposits because, as a credit union, I am reliant

upon the deposits that my members make to provide the liquidity that I need to lend out. So, while the interest rates have climbed, my members have not felt much of that pinch.

Again, I serve a low-income population and it is important to me to make sure that financial services are affordable to my members. The fee income really helps to offset the operating cost that goes along with collecting on overdraft, when a member overdraws their account. We have to send out letters. My staff is there calling members. It helps when members are coming in because their account is overdrawn because of a circumstance or a life event. As I said, my staff will take the time to talk to the member, understand the situation, and help them find a solution.

I can tell you that the way we operate in our credit union is, if a member's account is overdrawn, we will do everything that we can to help them to get back in good standing. We waive fees whenever possible. If a member comes in and asks, we have other alternatives that we make available to members. However, when you're serving a population that is vulnerable, quite often, they don't want loan products. They feel more comfortable with this service because it prevents them propelling into perpetual debt.

Senator VANCE. Sure. Sure. So, I appreciate that, Ms. Madry. I really pick up on that, that basic point.

Mr. Rust, I know you're an advocate of this proposal. And I want to just understand this basic question. I mean, do you think that consumers, especially lower-income consumers, will have less access to credit if this proposal becomes law, the junk fee proposal?

Mr. RUST. And you mean, specifically, the credit card late fee rule?

Senator VANCE. Yes.

Mr. RUST. So, thank you for the question.

I personally think that credit cards are among the most profitable sources of business for institutions. And the Y-14 data from the Federal Reserve talks about returns on assets that are three to four times greater than other forms of commercial banking. There's examples of institutions with profit margins of over 40 percent on their credit card business. So, in my view, this is a question of: will credit cards be exorbitantly profitable or just incredibly profitable?

Senator VANCE. So, I understand that and I don't necessarily disagree with the underlying argument, Mr. Rust. I guess my point is, look, when you take a product—even if I assume sort of your framing is correct and say it's very profitable to sort of moderately profitable, if you make something more expensive, if you take it from very profitable to just, you know, somewhat profitable, don't you fundamentally make it less likely that people are going to offer those services? And my point here is not to put you in a tough spot. I guess my argument is I think it would be better if we were just honest about the debate we are actually having. This proposal will, inevitably, lead to less credit options for lower-income people. And I wish its advocates would just lean into that and say, "Yeah, that's exactly what it's going to do. In fact, we think that's a good thing," as opposed to sort of hiding from the fact that it will mean less consumer credit for low-income people.

And I guess a related point is, if the goal here is to provide options and to reduce the debt spiral that we all know people in low-income situations sometimes experience, I maybe wish we had just tried to have dealt with that problem directly, as opposed to this sort of backdoor way of making credit more expensive, and consequently, less available to people.

So, I just wish this whole debate was a little bit more honest about what we're really doing. What we're proposing to do is to make consumer debt much less available to low-income people. Let's just be honest about that, and then, have the debate about whether that's good or bad, or could be accomplished through other means. That's sort of my point here. With that, Mr. Chairman, I'll stop. Thank you.

Chair BROWN. Thank you, Senator Vance.

Senator Menendez of New Jersey is recognized.

Senator MENENDEZ. Thank you, Mr. Chairman. Ample research shows that junk fees are disproportionately targeted at and paid by minority consumers. To give one example, according to a survey from Bankrate, Hispanic checking account holders pay an average of more than triple that of white account holders.

Mr. Sueiro, can you talk about the particular vulnerability of minority consumers to junk fees?

Mr. SUEIRO. Yes. So, the first point is, low-income people and working-class people across the board pay more in overdraft fees and credit card late fees. Latinos and Black consumers pay even higher rates of overdraft fees and junk fees.

We just did a survey where we found that 40 percent of all Latinos had paid a junk fee. This is much higher than other groups. Twenty-five percent of Latinos had paid a credit card late fee, which is also much higher than other groups.

So, it's widespread. It's disproportionately affecting people who don't have a lot of income.

Senator MENENDEZ. Yes. And then, one of the other elements of it is I'm concerned that disparities are even larger for the 26 million Americans who have limited English proficiency. These consumers are disproportionately targeted by scams. They often face difficulty accessing consumer protection resources and education materials. What can we do to promote price transparency and reduce the disproportionate fees paid by minority and LEP consumers?

Mr. SUEIRO. There's a number of different things. Number one is, you know, for LEP consumers, in particular, we need to make sure that our marketing and the materials that we offer consumers are transparent, are accurate, and are in Spanish and other languages spoken in the U.S. as well.

We've found in the auto-lending space that there's been a lot of issues with auto lenders promoting a product in Spanish at a certain price, and then, when the consumer comes in to get that loan, it turns out the price was different. The interest rate was higher. There were other fees associated. The FTC has done a lot of work trying to address that issue. So, that's one.

The second part is, on a broader scale, obviously, these rules we think will help. That's why we support them. In the market, we can also promote things like BankOn accounts. We can also pro-

mote things like affordable small-dollar loans that have low interest rates. Credit cards, lots of credit card products that are out there that are really solid have low interest rates, have no or low late fees. We need to be promoting those products as well.

Senator MENENDEZ. Thank you.

Mr. Rust, in May of 2022, the CFA and several other consumer groups sent a letter to the CFPB on junk fees and financial services. In that letter, you stated, and I quote, “Junk fees contributed to high rates of unbanked or underbanked households of color.” Close quote.

Can you and Mr. Sueiro elaborate on how junk fees drive low-income families away from the traditional financing system and how this negatively impacts their financial well-being?

Mr. RUST. So, thank you for that question.

The FDIC does research every 2 years on the unbanked and the underbanked, and they ask, “Why don’t you have a bank account?” And the first reason is, “I’m afraid of having a bank account because of surprise fees.” And the third reason, specifically, calls out overdraft fees. So, these set of fees are explicitly creating financial exclusion.

Senator MENENDEZ. Mr. Sueiro.

Mr. SUEIRO. I would add we see similar findings with credit card. There’s surveys out there asking consumers, “Why don’t you have a credit card, if you don’t have a credit card?” They cite costs, interest rates, and late fees, specifically, as one of the reasons why they don’t get those.

I would add, you know, people that do have these high-cost products are often more likely to, for credit cards being delinquent, for overdraft fees, to lose their products; get overburdened in debt in both situations, and can get pushed out of the financial system if they’re not able to pay those fees.

Senator MENENDEZ. Yes. According to a 2019 FDIC survey, 16 percent of unbanked households cited distrust of banks as the main reason for not having an account. It’s something we have to try to modify because we need people to enter a portal of financial institutions. So that, this way, they’re not going to the check-cashing place and the payday lender and the pawn broker.

One final question. One area where renters are feeling acutely the pain of junk fees is the search for housing in New Jersey, where housing is acute. It can be difficult, particularly for low-income families. And it seems that many landlords are taking advantage of that fact by charging exorbitant application fees—as high as \$350 in some instances, according to the National Consumer Law Center.

Mr. Rust, are these application fees truly reflective of actual costs incurred by the landlord in processing applications?

Mr. RUST. So, no, they’re not. Thank you for that question.

TransUnion, for example, has a service that they market to landlords where the cost is between \$25 and \$42, based on what basket of services the landlord wants. And then, yes, they turn that around and charge \$100 per person, even more. That’s what’s happening and that makes it very difficult to comparison shop, because just the search costs are so high. It makes people say, “I have to

apply for this first one and just take it, because I can't afford another \$300 application fee."

Senator MENENDEZ. Thank you.

Thank you, Mr. Chairman.

Chair BROWN. Thanks, Senator.

Senator Britt of Alabama is recognized.

Senator BRITT. Thank you, Mr. Chairman.

Americans are facing real problems and real financial challenges under the Biden administration. Yet, I am discouraged by the continual lack of responsibility taken by this White House for the consequences of its own actions.

What we see from this Administration is another attempt to change its messaging, to blame-shift, rather than reversing course or admitting fault. According to some of my colleagues on the other side of the aisle, it's not inflation or excessive Government spending, or overregulation, that is fueling the obstacles that hard-working families are facing just to make ends meet every day. Instead, they are pointing the blame to everyone imaginable.

Last week in this Committee room, we talked about shrinkflation. This week, it's junk fees that are to blame. "Junk fees," by the way, is an arbitrary term found nowhere in any legal statute—used by this Administration to vilify seemingly every industry that offers services to its customers. However, so many times, these are just political talking points used to distract from the root of the problem and to evade accountability.

There is also an attempt to justify significant regulatory actions from regulators across the board, and without any adequate cost-benefit analysis to follow, or any assessment of how these numerous rulemakings actually impact the end user, actually impact the customer, or actually impact the member. These very individuals that these regulators and the Administration claim to be, quote, "helping," I believe are the very ones that are going to suffer the most.

Mrs. Madry, just to clarify, you, obviously, are the CEO of a smaller financial institution, Afena Federal Credit Union. And I want to know how this is going to affect your members; what this means to the very people that we are trying to help.

So, first, does current regulation already require credit unions and banks to disclose fees to their members and to their customers?

Ms. MADRY. So, the current regulation is, it requires us to disclose fees, yes.

Senator BRITT. OK.

Ms. MADRY. We have a fee schedule that we go over with our members at the time that they apply for it.

Senator BRITT. OK. Thank you. And in addition to these disclosures that are already required by law, do your institutions typically engage in other forms of communication with your members or your customers? Do you, for instance, share things like low-balance alerts, things like that?

Ms. MADRY. Yes, we have texting services that our members can opt into that will alert them when their balance is low; plus, all sorts of tools where they can monitor their account online.

Senator BRITT. OK. Well, thank you.

In addition to these types of alerts and communications, have financial institutions, particularly these smaller credit unions, proactively made other changes to their late fees and overdraft fee programs without any additional regulation or legislative changes? Like what have you done to make improvements in this area?

Ms. MADRY. So, one of the things that we do is our members who have overdraft protection, we educate them that you do not have to access that by swiping your debit card. If you find that you cannot make ends meet, we encourage our members to come in and ask that all of the funds that are available be moved into their checking account or savings account, so that they pay just the one fee in the course of a month and they will have those funds available to them when they need them.

Senator BRITT. Excellent. I am glad to hear that. I certainly believe you understand the needs of your members and the day-to-day challenges that they face in the State of Indiana more than anyone in a regulating building here in Washington, D.C. So, I appreciate what you are doing to help the very people that these regulations intend or say they intend to help.

A couple of other questions. Do you, as the CEO, determine your salary or your bonus based on overdraft or late fee charges at your credit union?

Ms. MADRY. No.

Senator BRITT. Uh-hum, that's what I thought.

Ms. MADRY. And in fact—

Senator BRITT. Go ahead.

Ms. MADRY. —I will just share that, from time to time, I have told my board that I will forgo a raise or a bonus when I feel that our credit union needs to show a profit in order to be able to meet regulatory requirements.

Senator BRITT. And obviously, serve your members' needs. So, thank you so much.

And can you share with us what you anticipate will happen to the products that you offer to your members at your credit union if the CFPB's so-called "junk fee rules" are finalized as proposed? I mean, specifically, what would happen to things like free checking account or affordable small business loans? And that's kind of what I want to know.

Ms. MADRY. Yes. We would probably have to rethink our interest rate structure; increase our interest rates, when possible; eliminate things like free checking accounts, and—

Senator BRITT. Eliminate free checking accounts?

Ms. MADRY. Eliminate free—

Senator BRITT. The very thing the very people that this rule is so-called intended to help, I believe it will hurt, and I think that what you have said proves that right there. So, thank you so much.

And I wish we could take a look at these regulations and actually see how they affect the end user.

Thank you.

Ms. MADRY. Thank you.

Chair BROWN. Thanks, Senator Britt.

Senator Smith of Minnesota is recognized.

Senator SMITH. Thank you, Chair Brown.

Thanks to all of you for being with us today. I really appreciate it. It's a very important topic.

I'm going to focus my questions, first, with you, Mr. Rust. I want to talk a bit about these automated tenant-screening processes that are popping up all over the place. So, landlords are increasingly turning to automatic screening tools and reports to determine whether or not to rent to a prospective tenant. And so, who pays for these screenings? It's usually, of course, it he applicants.

And in Minnesota, a two-adult family is paying, on average, four application fees, incurring about \$320 in total costs, every time they're trying to find a place to live. And I've heard reports that that number could go up to \$800.

So, obviously, these screening fees are making it really expensive for families, especially low-income families, to find an affordable place to live. And they might not even result in a fair or accurate assessment of the capacity of that tenant to be able to be a good tenant.

One woman in Minnesota, for example, was denied an apartment because a tenant-screening report flagged an incorrect criminal record. And this isn't an anomaly.

An investigation of the tenant-screening industry by the CFPB found that screening services can use incorrect information and often provide limited explanation back to folks about why they've been denied—leaving renters in the dark and in the hole financially. So, they paid for an inaccurate screening.

So, could you talk a bit about this? Tell us your perspective on how this is working, the obstacles that they create for tenants, and what we should be doing to protect people against these tools?

Mr. RUST. Thank you for that question.

You've raised something really important, which is how the evolution of tenant-screening reports are changing. They're becoming more complex. And one of the issues that happens from that is that it's very difficult, if there's information on your report that's not true—well, first off, it's very hard even to know if that's the case. It's harder perhaps to even know how to fix it.

So, this is happening frequently. Again, when the information is wrong, and then, you're denied, well, that's \$100; that's \$200, and you've got to try again. And if the information is wrong on Tuesday, it's probably wrong on Thursday.

Senator SMITH. Right. Right. And, I mean, I'm kind of stuttering because I think that this is just so unfair—that you actually are being forced to pay for something that is inaccurately and unfairly denying you a place to live. And, I mean, wouldn't that go—I mean consumers should have a right to know whether they're being denied to rent based on inaccurate information. That's part of what's in fair lending laws, right?

Mr. RUST. Right. The FTC has been working on this, as well as the CFPB, with filing complaints against institutions that don't have record systems in place to make sure that information is correct.

Senator SMITH. Yes. Mr. Sueiro—am I saying your name correctly?

Mr. SUEIRO. Yes.

Senator SMITH. Thank you. I want to just follow up a bit on the question that Senator Britt and others have been asking about. You know, I think the consumers understand that the prices of products and services in this world have a markup, and that's capitalism. They get that.

But I think if you told them that they were looking at a markup that was, like, 400 percent, that maybe they would think twice about what's going on and what is really fair and reasonable. I mean, to me, that is really the issue that is at the core of the CFPB's credit card late fee rule.

And so, my question to you is—this is adding up to, you know, billions of dollars that it is costing people for these late fees. And there seems to be sort of this argument that credit card issuers are suggesting that these high fees are, basically, an incentive to get people to pay their bills on time. But that is assuming that people could pay their bills on time and aren't because they just don't feel like it, as opposed to what seems to be more likely, which is that they can't.

And so, I would like to hear your comments on this. And to me, this sort of gets at the issue of why it is so expensive to be poor in this country.

Mr. SUEIRO. Yes. So, there are a number of different pieces here. Number one is we know from lots of surveys, and we know from just talking to people, that one of the biggest reasons why people don't pay is simply they don't have the funds. Right?

And we also see this reflected in the data. It's lower-income people that are living paycheck to paycheck that are disproportionately paying these fees. So, folks are in a situation where they are faced with a decision between putting food on the table or paying this late fee. That's one.

Two is the CFPB collected a lot of comments, 57,000 comments. They received a ton of comments from consumers who had been paying late fees. One of the comments—so just to give you like a real-world example—of the people that commented was a parent. They had a very serious medical issue. They were paying for lots of expensive medicine. And they were working two and three jobs.

Senator SMITH. Uh-hum.

Mr. SUEIRO. You know, a third job every now and again just to make ends meet. They missed a payment because they had worked so late that they worked after midnight of the day that the payment was due, and they missed the payment window. They got charged with a \$35 late fee.

Senator SMITH. Uh-hum.

Mr. SUEIRO. So, this is the type of thing. That is also an example of where this is a working-class person. They had the funds, but they couldn't do it. But there's so many other things going on in people's lives that they couldn't pay it.

There were other examples, like people put their payment in the mail.

Senator SMITH. Yes.

Mr. SUEIRO. The money didn't get to the credit card company in time because the mail slowed down.

Senator SMITH. It's not their fault, and they're not going to pay quicker in any of those circumstances because they're, you know—Mr. Chair, I know I'm out of time.

Thank you for the opportunity to ask these questions and thanks to our panelists.

Chair BROWN. Thanks, Senator Smith.

Senator Cortez Masto from Nevada is recognized.

Senator CORTEZ MASTO. Thank you. Thank you, Mr. Chair. And thank you to the witnesses for being here today.

I know one of my colleagues already talked about manufactured housing. I'm going to touch on this because we don't talk about manufactured housing enough and the potential for it.

I know, Mr. Rust—thank you very much—wrote an incredible book here and very thoughtful about families who live in manufactured housing. To my colleagues, this was in 2007. If you haven't had a chance to read it, please do.

A few months ago, HUD announced a request for applications for a new program—I think you've talked about this—to fund new roads, water, sewer, tornado shelters, and other infrastructure improvements. It's called the PRICE program in honor of Congressman David Price, who, by the way, wrote the foreword here in the book.

And I led the bill for the Preservation and Reinvestment Initiative for Community Enhancement, the permanent program. And why is this? Because I see the benefits in my State.

But, Mr. Rust, can you explain why the 8.5 million Americans who live in manufactured home communities deserve special consideration and investment?

Mr. RUST. So, thank you for that question.

I've visited manufactured housing communities in Nevada, and this is, clearly, an issue there. The cost of rehabilitating a community, the cost of infrastructure investment, this is something that the PRICE Act will address. And I think it's strongly needed.

So, why are people living in manufactured housing? What are the reasons for that demand that exists? It's because it's affordable. It meets the needs of people who are seniors. It meets the needs of workers who may be working in a community where there is not a large set of construction workers. So, rural areas.

Senator CORTEZ MASTO. Thank you. Uh-hum.

Mr. RUST. Manufactured housing communities can be a very nice place to live. They are communities, right? But if they're being disinvested in—and I would say, if you go around to your local neighborhood and look for the neighborhood that is the least, that is receiving the least amount of capital, it's probably a manufactured housing community.

Senator CORTEZ MASTO. That's right. And that's the unfortunate piece about this. Because there also is some stigma associated with manufactured housing, which there shouldn't be. This is an opportunity for so many people to have a roof over their head and have it be affordable.

Also, I know one of my colleagues talked about private equity coming in and purchasing up a lot of these. I have concerns about that. We see that just in housing in general in southern Nevada, and it is an issue that we need to address, these high costs.

Mr. Rust, let me ask you this: in Nevada, 86 percent of extremely low-income renters are severely housing cost burdened, meaning renters that are spending more than 50 percent of their income on rent. And rents are only going up. Since 2020, rents have increased between 20 and 30 percent in some parts of my State. As families are forced to spend more and more on rent, they are left with fewer resources; we know that.

How do additional fees imposed on renters, like application fees, processing fees, and so-called convenience fees, exacerbate these high costs of renting?

Mr. RUST. So, that's a great question.

I think it gets down to, if you're going to comparison shop, if you're going to look on a platform and you see 10 different potential places to live, and some of those listings are all-in priced and some are partitioned, where there might be fees that you don't even know about, well, that makes it very difficult to comparison shop. It puts well-intentioned landlords who are being fair at a disadvantage with landlords that are playing these games.

So, yes, and I think what we're seeing are cases where consumers are paying rent on time in their community, in their manufactured housing community. Private equity comes in. They buy the park. They add \$400 in fees. And suddenly, it becomes groceries or paying the rent, or even if I have to leave, I may not be able to take my home with me. So, I may actually lose that home.

Senator CORTEZ MASTO. That's right. That's right. And nobody should have to make that decision, but, unfortunately, there are too many just even individuals that are having—I don't care whether you're a veteran, you're a senior, you're working, a hardworking family, still, there's many in our communities now that are having to make this decision. And that's why we have to address it.

But, more importantly, we have to address these fees and these junk fees that are add-ons. But we've got to address the housing issue and the affordability of housing. And that's why I'm so pleased there's bipartisan support in this Committee to really address these issues. And I hope—I hope—we are able to pass this—for the benefit of so many, not just in Nevada, but across the country.

There's more questions that I have. I'm not going to be able to get to everyone. I thank you for being here and your commitment to addressing these issues.

Thank you, Mr. Chair.

Chair BROWN. Thanks, Senator Cortez Masto.

Senator Warren of Massachusetts is recognized.

Senator WARREN. Thank you, Mr. Chairman.

So, in 2009, Congress passed the CARD Act to crack down on banks and other credit card issuers that were abusing consumers with excessive late fees and bait-and-switch terms, like those low initial rates that, once somebody signed on the dotted line, really jumped up, and jumped up high.

The CARD Act slashed average late fees by a third to \$23 in 2010, but, by 2022, 12 years later, by exploiting loopholes in the law, that number was back up to \$32—enough to make the biggest credit card companies an extra \$14.5 billion in profits that year.

Meanwhile, average credit card APRs have nearly doubled over the last decade from 13 percent in 2013 to 23 percent in 2023. That is the highest on record.

Now, as credit card companies have grown their profits through interest and fees, they have also become more concentrated—with the biggest issuers gobbling up the smaller ones. In 2022, the 10 biggest credit card companies in the country accounted for 83 percent of all credit card loans.

Mr. Rust, you have studied the credit card market for years now. Can you say something about how the smaller credit card issuers stack up versus the biggest issuers in terms of how much they're charging consumers—the big guys versus the small guys that are still left?

Mr. RUST. Thank you for that question.

And actually, I was really hoping to have the opportunity to say that CFA and the CFPB have pointed out that interest rates at smaller institutions, small credit unions, are lower, right? And this has to do, I believe, with the fact that the credit card market is somewhat broken.

Because the way that people are comparison shopping, when they say, "I would like to get a credit card," it doesn't take them to the small bank; it takes them through a comparison shopping site, a lead generator, that's earning large amounts of fees to direct them just to the cards that have the highest rates.

And we're seeing margin-on-margin issues where the amount of the margin is growing over time. It's never been higher. And credit card issuers that are larger are charging interest rates that are 8 to 10 percentage points higher now.

Senator WARREN. Wow. So, the big guys with the highest-paid CEOs are actually charging consumers a whole lot more than the little guys in the credit card market. And it's the big guys who are hitting particularly hard on customers' pockets.

Mr. Sueiro, you're an expert on predatory lending practices. Who's paying the bulk of the interest and fees that are driving credit card companies' profits?

Mr. SUEIRO. Yes. So, there's a number of different ways to look at it. CFPB has found that consumers with deep subprime credit scores are paying a disproportionately high amount of fees.

We know that that population are generally lower-income, working-class people of color. We know from our surveys, we know from other consumer surveys, you know, this has been reflected over time repeatedly, that low-income people disproportionately pay these. Latinos, Black consumers also are disproportionately paying these.

Senator WARREN. OK. So, people are paying more and you know who is paying more—people who are struggling the most.

Now, the CFPB is taking action to rein-in price gouging in the credit card market, including by capping most late fees at \$8—obviously, very good news for American families. Of course, we know who's not happy about that—big credit card issuers and their Republican friends in Congress.

Last month, Republicans introduced a bill to overturn the CFPB's credit card late fee rule, so that the credit card industry can continue squeezing every last dime out of these consumers.

One House Republican even said, quote, “The vast majority of Americans support these fees.”

So, Mr. Rust, I have to ask: do you know anyone who is actually a consumer who loves junk fees?

Mr. RUST. So, I have never heard someone say, “Oh, I paid an overdraft fee and I’m really glad that worked out.”

Senator WARREN. Yes, “That really worked out well for me.” I have never seen the bumper sticker “I heart junk fees.” Right?

How about you, Mr. Sueiro? Anybody you know who is excited about being gouged by a multibillion dollar bank?

Mr. SUEIRO. No, obviously not. And I want to add two things.

One is the CFPB received 57,000 comments from this. A vast majority or a large number were from consumers that were saying quite the opposite, that they were fed up with these fees; that they didn’t want to pay them. They were very unpopular.

The opposite is also true. If you ask consumers, “How would you feel about a product that doesn’t have such high late fees, or low fees?” they look at those products very favorably, and they actually have more goodwill toward financial institutions if they were to be offered those products.

Senator WARREN. Well, I’m really glad that the CFPB is taking up the fight on behalf of consumers and willing to stand up to these big banks. Thank you.

Thank you, Mr. Chairman.

Chair BROWN. Thank you, Senator.

Senator Fetterman is recognized from Pennsylvania.

Senator FETTERMAN. Thank you, Mr. Chairman.

And I would like to thank my colleague from Connecticut for allowing to do this.

Yes, hi.

Banks seem to really, really—they love fees like that, right? I didn’t. I think it’s helpful, if something happens to you, to really understand what a lot of other American consumers have faced with that kind of a thing.

I would say about 18, well, probably a couple of years ago, I was at a coffee place and I bought one, and then, everything went through. I didn’t think anything of it. And then, I had a notice that I overdraft my account. So, that was a \$40 cup of coffee. And then, I wasn’t at Blue Bottle.

But, at any rate, so it seems kind of crazy that you would allow your account to be charged for, you know, \$35 over a cup of coffee. And, of course, I didn’t really appreciate it.

So, in who’s interest was that, would you think? Anyone, what are your thoughts about it?

Mr. RUST. So, it’s in the interest of institutions that want to pad their profits with huge, exorbitant fees. I think we shouldn’t forget that, during the time when you were experiencing your not Blue Bottle coffee overdraft, that many institutions were using high-to-low check reordering to actually trigger additional overdrafts.

Senator FETTERMAN. Yes. Well, and that’s what I thought, and then, I called up my bank and I’m like, “Well, hey, that’s kind of crazy.” And they’re like, “Well, actually, sir, we allowed this transaction to occur, and you were able to get on with your day.” And they actually justified that by saying, “Well, that’s a service that

we provided, that you were allowed to get your coffee and get on with your day.”

And then, now it becomes very clear that these kinds of fees are a profit center. Is that accurate, too?

Mr. RUST. Oh, absolutely. The data from call reports reveals that the amount of fees coming in off of transaction accounts in some cases can be 20, 30, 40 percent equivalent to the net income of that financial institution. Those are almost overdraft stores.

Senator FETTERMAN. Yes, and it's pure profit, too. I mean, it's no service, anything other than it's just being nickeled and dimed. I personally don't enjoy that, being nickeled and dimed. Any of you in the panel, do you enjoy being nickeled and dimed anywhere you got?

Mr. SUEIRO. No, sir.

Senator FETTERMAN. No? Anyone?

But now, what once was something that was a penalty now has become part of their mission, like to do that.

And then, this happened just last week in my apartment. The D.C. rental market is kind of rough and I pay \$2,000 a month for 500 squares, and then, I left my key on the counter. And then, I approached the front desk and I'm like, "Could you please let me in, so I can get my key?" And they were like, "Well, absolutely." And then, they pulled out a form that said, well, that's \$50. I'm like, "Oh, no, no. I don't need another—I don't need a new key. Could you just let me in?" And they're like, "Well, that doesn't matter. That's \$50." And I'm like, "Fifty dollars to let me in?" And then, I really couldn't believe that someone would charge \$50 just to open up to just get your key.

And would agree that that's kind of junk fees for housing rentals?

Mr. RUST. Well, yes, absolutely, that's a junk fee. I feel bad for the person at the desk who had to follow the corporate policy that requires them to charge that fee.

Senator FETTERMAN. Well, yes, of course, it's not personal against the worker. But the fact that they institutionalized this idea that we're going to be \$50 for letting just get your key there, and that seems that's just pure profit, and that becomes that, too.

And metaphorically—and I know I'm running out of time—but I think that's the same kind of thing in Government where you cannot count or create, like, parking tickets and speeding tickets as, like, revenue. That should be for a public service or to protect a situation.

And in my opinion, it's just gone crazy. And now, when billions and billions of dollars now, those kinds of nickeling and diming now is part of their business strategy.

But thank you for joining me, and my time is off.

Chair BROWN. Thank you, Senator Fetterman.

Senator Van Hollen of Maryland is recognized.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Thank all of you for your testimony today. I've been trying to listen-in via C-SPAN, and I know a lot has been covered, of course, on the issue of overdraft fees and the finding that 80 percent of overdraft fees are borne by 9 percent of customers, which shows the impact of these fees on those who can least afford to pay them.

So, that is why the CFPB developed a rule to address this issue. Senator Booker and I organized a letter in April in support of the CFPB rule.

There's also been a lot of misinformation about the CFPB rule from opponents of it. Mr. Rust, if you could just briefly describe what the rule does and what it doesn't do?

Mr. RUST. So, thank you.

So, one of the things I like about the rule is how it creates multiple structures to fit different types of use cases and fit institutions into the different priorities they might have for their business.

So, there is the overdraft described as a "courtesy overdraft" where the institution is allowed to charge a fee up to a benchmark amount, and still receive an exemption from being regulated as credit. And it's a proposal. So, we don't know exactly what the rate will be.

There's also an option to create an intentional line of credit, an overdraft line of credit, that comes with consumer protections. And so, this is really moving in the direction that will be about financial inclusion, not "gotcha," but working together.

And then, there's a third aspect which you might call a hybrid debit credit card that allows a consumer to overspend, but instead resulting in a negative balance on the debit card side, it is paid from a separate but linked credit card account, which was set up beforehand and comes with CARD Act protections.

Such as rules against fee harvesting; an ability-to-repay standard; giving consumers time to repay, so a periodic statement; giving them the ability to choose how they repay their account, so that they don't incur another overdraft fee.

Senator VAN HOLLEN. I appreciate that because, as I said and as you know, there's been a lot of misinformation. I think it's a very well-tailored and well-designed proposal.

Mr. RUST. Yes.

Senator VAN HOLLEN. I do want to turn briefly to the issue of junk fees as part of the rental housing market. And the Chairman of this Committee has put a renewed focus on housing. We're the Banking and House and Urban Affairs Committee, and I appreciate that. And we've looked at ways to reduce the costs of housing, including rental housing, in terms of increasing the supply; making sure that we have voucher programs.

But one of the other areas where we've seen big increases in the cost of housing is not only rents, but in many of these sort of predatory junk fees that's the topic of today's discussion.

So, Mr. Rust and Mr. Sueiro, if you could just provide some examples of the most egregious junk fees you've seen in the housing market? I know some of them surfaced as part of the RealPage lawsuit. Maybe we should start with Mr. Sueiro, or Mr. Rust, either one, whoever wants to go first.

Mr. RUST. Right. So, there are additional costs being applied to home ownership that also raise the cost of housing. One of the things that we're worried about is any situation where you have to pay to pay, and particularly, if you have to pay to pay electronically, where the real cost of an ACH might be 4½ cents, but you have to pay \$7 or \$10.

The CFPB has been working on addressing junk fees in the title insurance market. Title insurance is an interesting market where there are counter-competitive pressures. Loss ratios on title insurance could be between 3 and 5 percent. That's the amount of the premium that is ultimately paid back to the consumer in the form of a claim. Most of the fees in title insurance are going to pay the institutions that provided the lead generation for that title insurance policy.

Senator VAN HOLLEN. Thank you.

Mr. Sueiro.

Mr. SUEIRO. Yes. No, I'll just add, you know, in the rental market, things like application fees, late fees on your rent payments, utility fees, administrative fees, right, I guess for, you know, the process of applying and things like this, those are the most common ones that we see. And again, you know, a similar pattern to the banking junk fees, which is low-income people across the board are paying those, and Latinos and people of color are also paying those disproportionately.

Senator VAN HOLLEN. Thank you. Well, thank you for your work on this. And to the CFA, thank you, and the team there, for what you're doing.

Mr. Chairman, thank you.

Chair BROWN. Thanks, Senator Van Hollen.

Senator Butler of California is recognized.

Senator BUTLER. Thank you, Mr. Chairman, for having this hearing.

And thank you all for your testimony and for your work.

I would like to just associate myself with the questioning from Senator Van Hollen relative to the rental market application fees, and, Mr. Sueiro, those that you just mentioned, as they have just an incredibly impactful impact on young people in the country, who are trying to find a way to do all the things that we expect them to do—save their money and be prepared for a rainy day, and the \$100 application fee or the \$50 trash take-out fee. And so, I appreciate your comment, specifically, to that market and to those young people, because I think that there are some things that we can and should be doing.

Let me turn to, actually, Mr. Sueiro, where you left off, the notion of disproportionate impact and racial wealth gaps relative to junk fees. The Federal Reserve Survey of Consumer Finances shows that, while the wealth of Black and Hispanic households grew at a faster rate than the wealth of white households, disparities continue to persist, in part, due to the proliferation of junk fees. Consumers of color are often pushed out of mainstream financial products into fringe financial services and predatory financial products, including high-cost loans and credit cards. You know this as well as I do, and thank you for helping my team facilitate that financial literacy webinar last week.

Mr. Sueiro or Mr. Rust, either of you can take the question. But what are the ways that junk fees perpetuate existing racial wealth gaps and hinder generational wealth-building?

Mr. SUEIRO. Yes. So, I want to start on the access side first. So, we've cited already today that high costs are one of the big barriers to obtaining these products. So, we know from the FDIC survey—

we've done surveys—if you just go out and ask people, “Why don't you have a bank account?” they'll cite cost as one of the biggest barriers. “I don't want to pay—you know, it's too expensive to pay for an overdraft fee or a monthly maintenance fee,” that type of thing. The same thing for credit card products. They'll tell you the same thing. “It's too expensive. Interest rates are too high. Credit card late fees are too high.”

So, on the one hand, we're creating a situation in which low-income people and people of color disproportionately are left out because they're concentrated in those working-class, low-income jobs. So, that's on the one hand. And if you look at the access to those products, they always have the least amount of access to those products.

In the bigger picture in terms of wealth, you know, the people who do have these products are also paying the highest fees and the highest costs. And so, you think about what's going on in that situation. This is a continual process where working-class people, people of color are paying a lot more, a bigger percentage of their money, back into financial institutions. And oftentimes, it's the biggest financial institutions. We're talking multibillion-, you know, trillion-dollar institutions that are getting back that money.

So, it's a wealth extraction and it's also financial exclusion process.

Senator BUTLER. Thank you for that.

Mr. Rust, I'd love to get your thoughts to that question. And I have done some work to introduce a set of bills relative to expanding language inclusivity and making sure that we are making the information much more accessible to people whose first language is not English. And so, I would love to have you combine these two issues for me, if you can. How and why are we here, and then, what are things like language access and ways that companies continue to take advantage of these communities?

Mr. RUST. So, sure. Thank you. I'll start with the first half and touching on a bit of what Santi said, but adding that Gen Z and Millennials face a housing market that's dramatically different than what generations before did. Currently, something like 30 percent of Gen Z, after high school or college, are living with their parents. And this is really about a lack of supply of housing, right? But this means that they're not getting on the escalator to home ownership, to wealth-building, to all the aspects of what we associate with the American dream.

So, related to your question, these new generations, younger generations, are more diverse, right? The bargain they're seeing isn't the same bargain.

And so, to the point about making sure that financial institutions use inclusive language, well, this is very important. We've worked a lot over time in things like adverse action notices, right? When you are turned down for credit, well, why were you turned down for credit? Well, if it's in English, that's doesn't really help if you're someone who comes from a family that speaks a different language, right? This is vitally important to being fair.

Senator BUTLER. Thank you.

And thank you, Mr. Chair.

Chair BROWN. Thank you, Senator Butler.

Thank you all for being here, for good questions. I appreciate so many people, especially on this side of the aisle, with such good questions. Appreciated the involvement of everyone on this Committee.

Senators who wish to submit questions for the hearing record, they're due 1 week from today, May 16th.

To the witnesses, please submit your responses to the questions within 45 days from the day you receive them.

Thank you all again. With that, the hearing is adjourned.

[Whereupon, at 11:41 a.m., the hearing was adjourned.]

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

PREPARED STATEMENT OF CHAIR SHERROD BROWN

The Senate Committee on Banking, Housing, and Urban Affairs comes to order. Senator Scott, welcome. The three witnesses, welcome.

Costs are far too high for Americans. Corporations are finding more and more ways to raise those costs to boost their own profits. We have talked about how every time Americans go to a grocery store they pay for corporate stock buybacks and executive bonuses. Last week, we looked at how companies use the latest technologies to jack up prices for consumers.

This week, we look at junk fees. These are surprise—although not that much of a surprise anymore—often last-minute charges that drive up the cost of products, have no justification or connection to anything other than their quest for profits.

Think about that hotel room you booked that has a bunch of mysterious charges at the end.

Or that time you paid your credit card bill over the phone, so you wouldn't be late, but were charged a convenience fee. The only thing that fee is convenient for is the bank's bottom line. Or let's say you're looking for an apartment and you finally find one with affordable rent. But when you get a look at the lease, you realize that, between the maintenance fee and the trash fee and the mysterious convenience fee, the actual rent you'll be charged each month is out of your budget now.

These hidden add-ons, surcharges, fees, they're all junk fees. They're extra costs that inflate the price you pay, but add no real value. They're often hidden. They're only disclosed when it's time to pay.

Consumers know what they can afford. That's why we all shop based on price. But when the real price is hidden through undisclosed junk fees, how are consumers supposed to find the lowest price? The answer is they often can't.

We hear a lot about personal responsibility and consumer financial literacy in this Committee, but no amount of financial education is going to protect someone from a tactic that's meant to purposely hide the real purpose of a product or service. They hide the price. That's the whole point.

Junk fees make a mockery of free and fair markets. Thirty-two dollars here, \$45 dollars there, sprinkle in a \$10 service fee. Before you know it, a product you thought was the most affordable option actually is the most expensive.

Without junk fees, consumers would keep more of their hard-earned money. They would be able to better find the lowest price, which is how you really should promote competition to bring costs down.

That's why the CFPB has taken long-overdue steps to reduce costs and fees and make them more transparent.

CFPB took a major step toward reducing costs for consumers when it issued its credit card late fee rule. Credit card late fees are the most costly and frequently applied junk fee. According to one report, one in five adult Americans, an estimated 52 million people, paid a credit card late fee last year.

By law, credit card late fees are supposed to be reasonable and proportional—that's what the law says, "reasonable and proportional"—to the cost that companies incur for late payment. So, be clear, there are massive trillion-dollar Wall Street companies. The idea that your missing your payment due date by a day or two is imposing some huge cost on the credit card company is just patently ridiculous.

Sure enough, CFPB found that credit card companies are charging consumers more than five times their cost. By 2022, that meant credit card companies charged consumers \$14.5 billion in late fees. That's up \$3 billion over the previous year, and who knows what next year will be?

The new action by the CFPB will lower credit card late fees that the largest credit card issuers can charge down to just \$8—if it stands. This will save Americans more than \$10 billion in fees each year. Of course—of course—the biggest banks oppose it.

They trot out the same old complaints we always hear every time anyone tries to do anything that might just cut into Wall Street profits just even a little bit. They whined in 2009 when we passed the Credit Act—or excuse me—we passed the CARD Act to lower some fees and increase transparency.

Surprise, surprise, the sky didn't fall. Consumer still have access to credit. And, of course, credit card companies still make billions in profits.

Of course, it's not just credit card late fees. Junk fees pile on top of all sorts of services and products. CFPB found that some auto loan services charge \$1,000 in repossession fees, almost three times the average repossession cost. Unsurprisingly, some owners never recover their cars because \$1,000 is an amount many working families cannot afford out of the blue.

Rental housing. Junk fees that are added to the advertised rent can make the actual rent paid unaffordable. We've seen cases where the advertised rent grows hun-

dreds of dollars a month once all the fees were added on top of the rent—application fees, utility deposits, trash fees, fees for the—a young man in my office pays a fee for the honor of paying his rent. Fee after fee after fee after fee.

Imagine a family getting approved for a place they think they can afford, but, then, getting several hundred dollars of surprise—surprise—added-on fees and surprise add-on fees when they go to sign their lease. Most renters can't afford these massive price increases, but they may not have an option once they have paid all the upfront costs and set their move-in date.

Be clear, the entire point of these fees is to hide the true cost. They could just list their rent for what it is, but they don't, because they want to make it impossible for families to actually, as they survey where they want to move, to actually find the lowest rent.

It's not a free, fair market. It's a rigged system. We need to continue working to expose and crack down on those fees that are raising costs on Americans to push already high corporate profits even higher. We need to defend the CFPB's work that has refunded \$260 million to consumers for unlawful junk fees—already saved that money and will save consumers billions in the future. Corporations raising these prices have armies of lobbyists to fight for them. At the beginning, I said people, when they go into the grocery store to shop, they're paying for stock buybacks and bonuses for executives—not too different in this world, in the banking world, in the apartment world, and in the car repossession world.

Our job is to stand up to those corporate lobbyists who work for everyone else, so that consumers can actually keep their hard-earned money. Senator Scott.

PREPARED STATEMENT OF SENATOR TIM SCOTT

Thank you, Mr. Chairman. Thank you to the witnesses for being with us today. At last week's hearing, we heard from my colleagues on the other side of the aisle that the high prices Americans are paying, as they struggle to put food on the table and face mounting debt, are the result of greedflation and shrinkflation. And today is a similar story. This time, the bogeyman is so-called junk fees and these fees are to blame for the obvious economic pain Americans are feeling—not skyrocketing inflation, not increasing global instability, and certainly not the slush fund known as the Inflation Reduction Act. Clearly, there's no shortage of fingerpointing for the failure of Bidenomics or, as I like to call it, "Brokenomics," because that's what's happening to the average American family.

My Democratic colleagues and this Administration have deployed a herd of scapegoats to deflect blame for the economic harm they have brought upon American households. Instead of taking responsibility for the real consequences of unchecked spending and increased regulation across the economy, the Biden administration would rather throw a towel over the mirror and say, "Not me."

Sure, it might be easy or even politically expedient to slap a label of "junk" or "excessive" on additional costs for legitimate products and services, in an effort to villainize business in America, so that they, themselves, do not have to face the reality that Bidenomics/Brokenomics is causing devastation after devastation after devastation upon the shoulders of the American people.

But it long past time that Democrats stop playing political games with price controls and trying to micromanage the business operations, especially when the real outcome of these feel-good gains is reducing access to credit and limiting economic opportunity for those who need it most.

That's why I introduced a CRA resolution to overturn the CFPB's credit card penalty fee rule. Let's be clear about what this rule will mean for American families.

It will result in lower credit limits and higher interest rates for borrowers.

It will result in new fees for services that are currently provided free of charge.

Finally, and perhaps worst of all, this rule will cutoff access to credit and stymie financial inclusion for the families who need it most.

Sadly, I wasn't surprised when the CFPB finalized the credit card penalty fee just days before the President's State of the Union Address. That's the politics of this Administration. Actions that sound good as talking points, just like the billions of dollars of student loan forgiveness, but they are truly divorced from economic reality.

And it's not just the financial sector; it's everything everywhere all at once. That's what astounds me—this Administration's rhetorical hypocrisy.

The White House has claimed that a "junk fee" is a charge designed either to confuse or deceive consumers. Ironically enough, two of the recent targets within the Committee's jurisdiction—overdraft and credit card late fees—are two of the most highly regulated and transparent business practices in any industry. The credit card

late fees and overdraft fees we are discussing here today are, in fact, not illegal and are heavily regulated.

And while we are on the subject of regulation, if Democrats actually wanted to address the junk fees that American families are facing, a good place to start would be the enormous costs that consumers are paying due to the Biden administration's regulatory onslaught. It's an albatross around every family trying to make ends meet.

Since he took office, the total cost of President Biden's regulatory nightmare—the mountain of red tape—is \$1.37 trillion. That's 1.37 trillion—"T" as in Tom—dollars paid by everyday families in the form of higher prices because of these new regulations.

This contributes to the increased cost for food, housing, vehicles, and all the other basics a family must have just to survive—and this happens while inflation is raging.

If my friends on the other side of the aisle were truly interested in helping the American family, the American people, this hearing would be about finding solutions to tame the inflation that has increased the cost of goods by almost 20 percent since President Biden took office. We should be discussing how real average hourly wages have decreased under this Administration. Remember, 52 paychecks in a row where inflation was higher than wage increases.

And we would be discussing how President Biden has promised to let the TCJA, the Tax Cuts and Jobs Act, expire next year, which would result in a \$2.5 trillion tax increase on the American family. But that's not the conversation we're having today, unfortunately.

In closing, it is my hope that we will hear today how misguided the Administration's attempts are to push the financial services industry into only offering one-size-fits-all products, when we should be really focusing on providing solutions to the financial hardships facing Americans.

And let me just close with one example. Everyone I know hates paying a late fee, but the late fee is oftentimes the one thing that encourages us to take our bills more seriously. Because, ultimately, a late fee represents a late payment, and if you are late on your payment, ultimately, your credit score goes down, which means that the cost of borrowing goes up—undeniably.

If we really want to save Americans more money, we should focus not on these fees that encourage better payment history—so your credit score goes up and your interest rates go down—we should focus on the cost of gas, up 40 percent; we should focus on the cost of energy, up 30 percent; we should focus on the cost of food, up 20 percent—not on late fees.

PREPARED STATEMENT OF ADAM RUST
DIRECTOR OF FINANCIAL SERVICES, CONSUMER FEDERATION OF AMERICA
MAY 9, 2024

May 9th, 2024

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

Honorable Chairman Sherrod Brown
503 Hart Senate Office Building
Washington, DC 20510

Ranking Member Tim Scott
104 Hart Senate Office Building
Washington, DC 20510

Honorable Chairman Brown and Ranking Member Scott:

Thank you for the opportunity to testify today on this important issue.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors.

The White House estimates that consumers are charged \$90 billion in junk fees every year.¹ Junk fees harm consumers and undermine the financial stability of their households. While the existence of junk fees is not new, their presence in the daily lives of consumers is growing. As a result, junk fees now exist in places where they have previously occurred. Junk fees are multiplying in number, variety, and frequency. Americans are being "nickel and dimed" by these practices.

Junk fees undermine competition by obscuring the real price of goods and services. Markets rely on transparency to function. When the real cost of a service is clear up front, consumers may be vulnerable to making decisions contrary to their interests. Businesses that extract junk fees may gain an unfair advantage over rivals that do not.

SUMMARY

Part One: Prevalence of Junk Fees, how they are applied, and conditions necessary.

Part Two: How junk fees are emerging across many financial and finance-adjacent markets.

- I. Junk fees in rental housing
- II. Credit Card Late Fees

¹ Council of Economic Advisers. "The Price Isn't Right: How Junk Fees Cost Consumers and Undermine Competition." Issue Brief. The Biden Administration, March 5, 2024. <https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/>.

- III. Overdraft and Insufficient Funds Fees
- IV. Other types of junk fees

Part Three: Regulation will improve markets by enhancing competition.

- I. The CARD Act improved consumer protections for credit card markets without compromising access to credit.

Part One: Prevalence of Junk Fees, how they are applied, and conditions necessary.

Junk fees flourish when consumers are at a disadvantage. They are like mold—they grow best in the dark. When consumer choice is thwarted because of complexity, it is easier for providers to insert junk fees.

In a properly functioning marketplace, junk fees would not occur. Consumers would recognize the lack of value in a junk fee and refuse to pay. However, perfect markets are an abstraction. In practice, consumers and producers transact in markets that vary greatly in their fairness.

Providers can extract junk fees when it is hard for consumers to understand the true price of a service. In classical economics, free markets require sellers and buyers to have full information and zero search costs.² However, when there are information asymmetries or when consumers must make decisions through a slow and labor-intensive process of price discovery, they will be vulnerable to paying more.

A key driver of their ability to gain leverage in pricing is derived from complexity. By design, junk fees make it harder to understand the true cost of a product or service. Recent CFPB research has demonstrated how complex pricing could trick consumers into paying more for goods. In a three-part survey instrument, consumers were asked to evaluate the cost of a service offered through three different pricing structures. In the first scenario, sellers provide a single all-in price. In the second, the price was disaggregated with eight different fees. In the third, sellers described the cost in sixteen sub-prices. In the disaggregated structures, consumers struggled to compare prices from different sellers. In some cases, they believed they were paying less for offerings when they were actually consenting to higher prices. The study revealed that junk fees are an effective way for sellers to derive additional profits.³

When consumers are held captive to the choices of third parties, they may be vulnerable to exploitative junk fees. For example, in some markets, consumers do not choose their financial services provider.

Types of Junk Fee Structures

While there is no singular definition of a junk fee. Instead, junk fees are manifested in several different categories. Junk fees may have one or more of the following characteristics:

- Intentionally complex to the point of causing confusion. They have pricing structures where significant contributors to cost come from surprise fees.
- Partitioned: fees are charged in sequence over time.

² Lhachimi, Stefan, and Johannes Siegrist. "Classical Economics - an Overview | ScienceDirect Topics." In *International Encyclopedia of the Social & Behavioral Sciences*, 2nd ed. Science Direct. Accessed May 1, 2024. <https://www.sciencedirect.com/topics/social-sciences/classical-economics>.

³ Beckett, Dustin. "Price Complexity in Laboratory Markets." Office of Research Publication. Consumer Financial Protection Bureau, April 30, 2024. <https://www.consumerfinance.gov/data-research/research-reports/price-complexity-in-laboratory-markets/>.

- Are excessive in relation to cost for providers and benefits to consumers: Fees charged at rates far more than the cost experienced by providers.
- Fraudulent: fees that providers are not permitted to charge.

Junk fees are incredibly costly. In 2022, consumers paid \$14.5 billion in credit card late fees and \$7 billion in overdraft fees.

Part Two: How junk fees are emerging in housing and financial markets.

I. Junk fees are raising the cost of rental housing.

Junk fees make housing even more unaffordable, jeopardizing access to housing, constraining budgets, and undermining household financial stability.

Junk fees in housing can include fees at inflated prices, fees for services that a property manager should supply as a matter of providing a habitable space, and fees for services of little or no value.

Not too long ago, the terms of a lease were relatively straightforward: the tenant paid a monthly rent and put down a deposit. There were a handful of additional services that could come with a fee, but the number was far less than now. For example, as is the case now, some landlords charged pet fees or deposits. Some – but not all – charged an application fee.

Today, fees have exploded in number and amount. Examples include rental application fees, lease signing and lease administration fees, fees for receiving utility bills, notice fees, move-in and move-out fees, inspection fees, lease renewal fees, fees to hold an apartment, fees for receiving mail, pet rent, fees for amenities, technology package fees, and others.⁴ Some of these fees may be charged for services with a real cost for providers, but even in those cases, their partitioning across the lifecycle of renting means that consumers have a harder time understanding costs when they compare rental listings. Some are merely ways to gouge consumers.

Large investment firms' entry into single-family rental housing markets has contributed to the rise in rental junk fees. Filings to the Securities and Exchange Commission (SEC) by several large corporate landlords show they enhance returns through ancillary fees, even as they build technology to lower their operating costs.⁵

Some junk fees enable property managers to profit from reviewing and accepting tenant applications. Increasingly, property managers "gouge" applicants.

While property managers have a legitimate interest in finding applicants who can afford to pay rent, the process should not be a profit center. National credit reporting agencies offer tenant checks for \$25 to

⁴ Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>.

⁵ Fields, Desiree, and Manon Vergerio. "Corporate Landlords and Market Power: What Does the Single-Family Rental Boom Mean for Our Housing Future?," April 13, 2022. <https://escholarship.uc/uc/item/07d6445s>.

\$50.⁶ In a recent CFPB study on tenant screening, most application fees were priced at rates consistent with this level of cost. However, nine percent of applications cost more than \$100.⁷

In a 2023 50-state survey, housing advocates noted that fees had increased dramatically in the last few years.⁸

Each application comes with an additional application fee.

High application fees undermine free choice. Tenants do not have unlimited budgets for application fees. To understand the search costs associated with finding an apartment, it is important to remember that application fees will be charged to each person on the lease.⁹ In some cases, part of an applicant's fee can be refunded when the tenant signs a lease, but that is not always the case. Application fees can be high, and while a handful of states have set maximums on them, most states have not set any limits on them and allow them to be non-refundable.¹⁰

They also noted that some landlords appear to accept more applications than could reasonably be justified for a single property to create new revenue streams or take applications from tenants with criminal records even though they have a policy of not renting to these populations.¹¹

Many fees are not revealed upfront, making it difficult for applicants to compare costs and increasing the likelihood that they will accept junk fees.

Many of the junk fees extracted by landlords and property managers occur through the partitioning of costs over time. When this happens, the advertised rent does not reflect the actual cost of leasing a property. This undermines transparency in the market because tenants cannot compare costs.

For example, the existence of a lease signing fee may not be revealed until after the applicant has completed (and paid for) a rental application. Lease signing or lease administration fees are routinely as high as \$200.

The expectation to pay these fees is not necessarily known at the time of an application and, most likely, is not known in advance of their assessment, well after a tenant has made a commitment to the contract.

It is concerning when services that should be considered as essential to renting are charged separately. This raises the cost of rent. Advocates reported that tenants were charged shared billing and ratio utility billing system fees in multi-family units where utilities are shared among tenants. Pest control fees are

⁶ TransUnion. "SmartMove: Great Reports, Great Convenience, Great Tenants." Accessed May 5, 2024. <https://www.mySMARTmove.com/tenant-screening-services/tenant-credit-checks>.

⁷ Consumer Financial Protection Bureau. "Tenant Background Checks Tenant Screening Issues Described in Consumer Complaints and Interviews." Consumer Snapshot, November 2022. https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

⁸ Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>.

⁹ Apartments.com. "Cosgrove Hill - Apartments in Chapel Hill, NC." Accessed May 5, 2024. <https://www.apartments.com/cosgrove-hill-chapel-hill-nc/7161-drz/>.

¹⁰ White, Stephen Michael. "Rental Application Fees: Rules & Procedures In All 50 States." RentPrep, July 12, 2023. <https://rentprep.com/blog/tenant-screening-news/the-landlord-guide-to-charging-rental-application-fees/>.

¹¹ Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>.

common, even though the landlord has a vested interest in preventing infestations and may have a legal obligation to do so, are common. Some tenants are charged fees for furnace maintenance.¹² While these fees may cover needed services, by separating them from the upfront cost of the apartment, potential applicants are less likely to understand the true cost.

Some junk fees are designed to work around protections in place against other fees.

For example, many states have rules that limit the size of a rental deposit. The limit is a factor of monthly rent. The purpose of a deposit is to protect a property owner against damage. This is reasonable, but some leases now apply fees to tenants to pay for an additional insurance policy against damage. Property owners are the beneficiaries of these policies.¹³

Property managers may apply mandatory fees to offer services that should be elective.

Property managers charge “amenity fees” to provide services that are not necessary. For example, an amenity fee may cover the cost of identity protection or rent reporting. Some property managers apply a technology package for internet or cable.¹⁴ While the fee does compensate a provider for a real cost, tenants may be forced to buy services that they would otherwise not choose to have.

Junk fees are applied to residents of manufactured housing communities.

Junk fees in manufactured housing communities (MHCs) have become common. They are taking money from vulnerable residents.

From 2015 to 2018, eight private equity-owned real estate companies purchased 153,062 lots in manufactured housing communities.¹⁵ Most of these are larger parks located in rural areas in the Midwest and West. To satisfy the rate of return required by their investors, new corporate owners have raised rents and applied new fees.

MHCs are workforce housing. They are also a popular choice for senior citizens who want to live in a single floor. Communities provide valuable support networks to their residents. In some rural counties in the United States, manufactured homes house more than one-third of all households.

Residents of MHCs are vulnerable to manipulative fee hikes because they are generally unable to move. Many manufactured homes cannot be moved. Some can, but at a cost of \$5,000 to \$10,000. If it is possible to move them, and if an owner can afford it, it can be very hard to find a community that will accept a used home. Already, the number of MHCs is dwindling, and very few municipalities are open to approving new MHCs.

For these reasons, MHC residents have little ability to fight against the imposition of a new fee. If a new owner wants to raise rents by 50 percent or more, residents face a tragic question: sell their home, abandon it (where the park owner will assume ownership), or pay the new and much higher rent. This

¹² Gaston, Rebekah. Interview with Kansas Holistic Defenders, May 1, 2024.

¹³ Gaston, Rebekah. Interview with Kansas Holistic Defenders, May 1, 2024.

¹⁴ Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. “Too Damn High: How Junk Fees Add to Skyrocketing Rents.” National Consumer Law Center, March 2023. <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>

¹⁵ Baker, Jim, Liz Voigt, and Linda Jun. “Private Equity Giants Converge on Manufactured Homes: How Private Equity Is Manufacturing Homelessness & Communities Are Fighting Back.” Private Equity Stakeholder Project, MH Action, and Americans for Financial Reform Education Fund, February 2019. <https://pestakeholder.org/wp-content/uploads/2019/02/Private-Equity-Giants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf>

leverage is a talking point for Mobile Home University, an industry group that promotes investment in MHCs.¹⁶

Corporate owners living hundreds or thousands of miles away from a community may not have the same relationship-based approach to management. Those differences are evident in junk fee policies. For example, some new owners have imposed limits on the number of cars permitted in a driveway and charged fees to residents when they have more than the maximum. In a park in Texas, RV Horizons raised rents, instituted fees for households with more than four residents or for extra parking, and severed common area utilities from rent. Tenants previously paying \$380 per month now owed \$800.¹⁷ Some companies create new requirements for home maintenance – and impose fines for non-compliance.¹⁸ Because these fees are, at their root, a judgment on a homeowner's private choices, they provoke moral resentment in addition to their economic harm.

Fees are furthering racial wealth gaps.

Given existing discrepancies in homeownership along the lines of race, the imposition of these fees has implications for racial equity. In January 2024, 74 percent of white households owned their home,¹⁹ whereas 45.7 percent and 49.9 percent of Black²⁰ and Hispanic²¹ households, respectively, owned their homes. The result is that households of color are disproportionately more likely to be impacted by these practices.

Junk fees contributed to a dynamic that will widen inequality. A high share of homeowners refinanced their mortgage loans during the pandemic, locking in their financing costs at historically low levels and providing long-term protection against inflation and correlated increases in the cost of housing. However, black households were less likely to refinance, and when they did, they were more likely to refinance at higher rates, leading to a compounding effect: white households were more likely to own homes, more

¹⁶ Findell, Elizabeth. "Housing Advocates Protest 'Boot Camp' to Maximize Trailer Park Profits." *Austin American-Statesman*, December 2, 2017. <https://www.statesman.com/story/news/2017/12/02/housing-advocates-protest-boot-camp-to-maximize-trailer-park-profits/10143826007/>. "The fact that tenants can't afford the \$5,000 it takes to move a mobile home ...makes it easy to raise rent without losing any occupancy."

¹⁷ Chakraborty, Ranjani. "In Texas, Trailer Park Fights Mobile-Home Moguls for Affordable Housing." *Al Jazeera*, October 28, 2015, America Tonight edition. <http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/10/28/trailer-parks-price-gouging-texas.html>.

¹⁸ Baker, Jim, Liz Voigt, and Linda Jun. "Private Equity Giants Converge on Manufactured Homes: How Private Equity Is Manufacturing Homelessness & Communities Are Fighting Back." Private Equity Stakeholder Project, MH Action, and Americans for Financial Reform Education Fund, February 2019. <https://pestakeholder.org/wp-content/uploads/2019/02/Private-Equity-Giants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf>.

¹⁹ U.S. Census Bureau. "Homeownership Rates by Race and Ethnicity: Non-Hispanic White Alone in the United States." FRED, Federal Reserve Bank of St. Louis. FRED, Federal Reserve Bank of St. Louis, January 1, 1994. <https://fred.stlouisfed.org/series/NHWAHORUSQ156N>.

²⁰ U.S. Census Bureau. "Homeownership Rates by Race and Ethnicity: Black Alone in the United States." FRED, Federal Reserve Bank of St. Louis. FRED, Federal Reserve Bank of St. Louis, January 1, 1994. <https://fred.stlouisfed.org/series/BOAAHORUSQ156N>.

²¹ U.S. Census Bureau. "Homeownership Rates by Race and Ethnicity: Hispanic (of Any Race) in the United States." FRED, Federal Reserve Bank of St. Louis. FRED, Federal Reserve Bank of St. Louis, January 1, 1994. <https://fred.stlouisfed.org/series/HOLHORUSQ156N>.

likely to take advantage of low rates during the pandemic and to emerge from the pandemic having locked in lower borrowing costs for the long-term.²²

In a March 2023 letter, the Secretary of the Department of Housing and Urban Development called for corrective action:

- Rental housing providers should limit application fees to levels needed to cover costs.
- Platforms should create structures that permit applicants to use the same background check for multiple applications.
- When rental properties are listed on a platform, prices should reflect all costs to secure housing and costs to be paid on an ongoing basis.
- Eliminate duplicative fees, such as application fees and lease signing fees.²³

The Consumer Federation of America supports the Secretary's call to action.

II. Credit card late fees have cost consumers billions. The CFPB's new late fee rule will close a loophole.

The CFPB is acting to restore the price of late fees to a level that is reasonable and proportionate to costs.

In 2022, consumers paid more than \$130 billion in interest and fees for their credit card accounts. Credit card late fees represented the largest share of fees, amounting to \$14.5 billion. The CFPB's final rule establishes a benchmark fee cap of \$8.

In a 2023 survey of 2,089 adults, 82 percent of respondents said they supported a rule that would lower the maximum amount of a credit card late fee.²⁴ In comments filed to the CFPB on the rule, over 98 percent of commenters said they supported the rule.

Credit card late fees are penalty fees. In the CARD Act, Congress said that penalty fees should be reasonable and proportional to costs.

In the CARD Act, Congress placed a limit on the amount card issuers can charge for "back-end" penalty fees,²⁵ including when a consumer exceeds their credit limit or makes a late payment. Regulation Z has been clear well before the new rule on this fact:

"...A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan, such as a late payment, exceeding

²² Demaria, Kyle. "Home Mortgage Refinancing Disparities During the COVID-19 Pandemic: Insights for Delaware, New Jersey, and Pennsylvania." Research Brief. Federal Reserve Bank of Philadelphia, March 2022. https://www.philadelphiafed.org/-/media/frbp/assets/community-development/briefs/cdro_22-02-home-mortgage-refinancing-disparities-during-the-covid-final.pdf.

²³ Fudge, Marcia. Open Letter to Housing Industry. "Secretary Fudge Pens Open Letter on Addressing Junk Fees That Renters Face." Open Letter to Housing Industry, March 8, 2023. https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_048.

²⁴ Consumer Reports. "September 2023 Omnibus Results." American Experiences Survey. University of Chicago NORC, September 2023. https://article.images.consumerreports.org/image/upload/v1696262259/prod/content/dam/surveys/Consumer_Reports_AES_Toplines_September_2023.pdf.

²⁵ Reg. Z, § 1026.52(b)(1).

the credit limit, or a returned payment, unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation...²⁶

After conducting research to verify that prevailing market rates for credit card late fees were priced consistently with cost, the CFPB found that a dramatic divergence between cost and fees had developed. It determined that prevailing late fees could be as much as five times greater than costs. The credit card late fees rule corrects this discrepancy.

The CFPB's rule is flexible. Going forward, issuers can receive a safe harbor if they apply a late fee that is under the determined benchmark fee. Or, if an issuer can demonstrate that its observed costs are higher, it can receive permission to charge a higher rate up to the point of cost recovery.

A cap on credit card late fees will not cause credit card issuers to withdraw from the market.

Credit cards are among the most profitable lines of business in commercial banking. In 2022, credit card issuers received \$130 billion in interest and fees, including \$14.5 billion in late fees.²⁷

The Federal Reserve's review of the credit card market found that returns on assets (ROAs) for monoline credit card banks were three to four times higher than the ROAs of other commercial banks. From 2001 to 2022, ROAs for credit card banks were profitable every year except 2009. Monoline credit card banks enjoyed an average ROA of 4.71 percent during those 22 years. ROAs of the credit card portfolios of very large financial institutions were nearly the same. By contrast, the ROAs of all commercial banks were 1.41 percent during the time frame.²⁸ Because banks are highly leveraged,²⁹ an ROA of 4.7 could mean these activities delivered returns of greater than thirty-five percent to equity investors. Other measures of profit, such as net interest income on assets, were also higher.

In essence, issuing credit cards is a great opportunity. The fact that these outsized returns have been sustained for so long suggests that the market favors existing entrants. Otherwise, new issuers would arrive and bid down returns. But that does not occur, leading to the conclusion that something anti-competitive is occurring in this sector. One factor could be the exclusive agreements between issuers and airlines, hotels, and other commercial firms. But regardless, even if ROAs fall because of foregone late fees, credit card lines of business will still be more profitable than other types of banking by a factor of two to threefold.

Because there are many ways to earn money from their accounts, the late payer will still be a desirable customer. Intuitively and in practice, consumers most likely to pay late fees are also the account holders most likely to pay interest on revolving debt. Even though they make up about one-fifth of all account holders, "heavy revolvers" pay 47.6 percent of late fees, 72 percent of interest, and 19.8 percent of annual fees.³⁰

²⁶ *ibid*

²⁷ Consumer Financial Protection Bureau. "The Consumer Credit Card Market." Consumer Financial Protection Bureau, October 25, 2023. <https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market/>.

²⁸ Bord, Vitaly M., Robert Adams, and Bradley Katcher. "Credit Card Profitability." *FEDS Notes* 2022, no. 3100 (September 2022). <https://doi.org/10.17016/2380-7172.3100>.

²⁹ BankRegData.com. "Tier 1 Leverage All Banks." Accessed May 4, 2024. <https://www.bankregdata.com/allHMMet.asp?met=LEV>.

³⁰ Bord, Vitaly M., Robert Adams, and Bradley Katcher. "Credit Card Profitability." *FEDS Notes* 2022, no. 3100 (September 2022). <https://doi.org/10.17016/2380-7172.3100>.

However, the dynamic of “creaming” accounts, while observable in mortgage or small business lending, is not as strictly adhered to in credit cards. If, as the credit card industry suggests, late fees make credit card portfolios less profitable, the outcome of constricting credit from late payers would be to reduce access to the most profitable accounts. But further, because lower-margin transactor accounts are still far more profitable than most other banking activities, those accounts will remain open, too.

The industry has suggested that without late fees, riskier customer segments will lose credit access. A similar argument was made before the introduction of the CARD Act. As discussed in greater detail later, these cries of alarm proved to be without basis.

If credit card late fees fall by \$9 billion, as estimated by the CFPB, then reduced profits for credit card issuing from “incredibly profitable” to “almost as incredibly profitable” will not force banks to raise other fees. Credit card issuers will pay lower lead generation fees to marketing websites.

Lead generators participate in the ebbs and flows of their network partners' profitability. If the credit card late fee rule curbs some issuers' profits, banks will respond by lowering the commissions they pay to lead generators. This will be a far easier way for banks to remain profitable without passing on lost profits to consumers in the form of higher fees.

These sites are very profitable because they deliver applicants to banks. Banks pay lead generators fees, which can range between \$80 and \$150.³¹ In addition, card issuers often pay even more through sign-up bonuses. In 2022, one publicly-traded lead generation company earned \$100.2 million by referring site visitors to credit card issuers.³²

If the credit card late fee reduces the scale of lead generation marketing, it will address a separate problem that has increased costs for consumers and put smaller financial institutions at a competitive disadvantage. Because large banks are their network partners, lead generation sites point shoppers to cards from the largest issuers. It has an anti-competitive effect. Well-intentioned consumers who are diligently shopping for the best card to fit their needs are being directed to sites whose biases have been compromised by commissions. When they search for “best credit card,” a lead generation site will interpret the question to instead ask “what is the best credit card for this consumer among those that pay our company a commission?”

While the practice helps banks to receive higher interest on revolving balances, it disadvantages consumers and small bank credit card issuers. In a 2024 guidance, the CFPB noted how lead generation sites help drive consumers to pick higher-rate cards from large issuers.³³ Evidence of anti-competitive

³¹ Parvathy, P. “What Is the Average Customer Acquisition Cost That a Bank Pays to Acquire a Credit Card Customer? I’m Looking at Potentially Investing in a Startup That Will Offer a New Credit Card Product -- and Trying to Get a Sense of the Industry Average Cos...” *Wonder* (blog). Accessed May 5, 2024. <https://askwonder.com/research/average-customer-acquisition-cost-bank-pays-acquire-credit-card-customer-i-m-fy512dtej>.

³² Lending Tree. “Lending Tree Annual Report for the Fiscal Year Ending December 31, 2023.” Annual Report. Securities and Exchange Commission, February 2024. <https://investors.lendingtree.com/static-files/6091a1b9-f0c2-4d4e-b6c0-990085edb7a5>.

³³ Consumer Financial Protection Bureau. “CFPB Issues Guidance to Rein in Rigged Comparison-Shopping Results for Credit Cards and Other Financial Products,” February 29, 2024. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-rein-in-rigged-comparison-shopping-results-for-credit-cards-and-other-financial-products/>.

effects is evident because even though smaller banks and credit unions issue cards with lower rates, they have a very low share of the market. The distinction holds after controlling for borrower credit score.³⁴

Despite what defenders of credit card banks believe, lower late fees will not encourage more consumers not to pay their bills.

Some critics of the rule have suggested that if late fees are lower, then consumers will see it as advantageous to be late on their payments more frequently. This “deterrence” theory goes so far as to say consumers will wittingly harm their credit because of the lower fee.

However, deterrence exists without late fees from credit card companies. First, revolving debt incurs interest. By definition, account holders who miss a payment will be charged interest on their revolving balances. According to Federal Reserve data, “heavy revolvers” owed an average of \$4,418. At 22.9 percent interest, they will pay \$84.31 per month in interest. Second, credit card issuers are permitted to raise interest on new balances for accounts open for at least 12 months. Third, the credit scores of late payers will be reduced. They may also have their credit line reduced.

The “deterrence” theory is short-sighted. People miss payments because they lack the resources to cover their debt obligations or because they made an honest mistake. Financial distress – and not intentional avoidance of debt – drives credit card delinquency. On a macroeconomic level, increases in regional unemployment will lead to higher rates of credit card delinquency.³⁵ An unexpected medical bill or other financial emergency is also likely to lead to a missed payment. The deterrence theory ignores these real-world truths and instead relies on the abstract assumption that consumers intentionally skip payments that they can afford to make.

Moreover, the principal harm – that a consumer’s credit score will be harmed – only occurs in a fraction of late payment incidents. While an issuer can charge a late payment if the payment is late by even a few hours, notifications to bureaus are sent only once accounts are 30 or more days past due.³⁶

Given the ability, consumers will repay. The pandemic revealed that consumers prioritize paying down their debts. In fact, the pandemic created a real-world experiment to test the idea that consumers require a late fee deterrent to repay debt.

During the pandemic, consumers received cash without instructions on how to spend it. Simultaneously, banking regulators encouraged banks to suspend charging late payment fees, including for credit card accounts.³⁷ Many banks did so, either across all accounts or as a means of accommodating distressed

³⁴ Consumer Financial Protection Bureau. “CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions,” February 16, 2024. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-large-banks-charge-higher-credit-card-interest-rates-than-small-banks-and-credit-unions/>.

³⁵ Agarwal, Sumit, and Chunlin Liu. “Determinants of Credit Card Delinquency and Bankruptcy: Macroeconomic Factors.” *Journal of Economics and Finance* 27 (March 1, 2003): 75–84. <https://doi.org/10.1007/BF02751591>.

³⁶ Akin, Jim. “Does a One Day Late Payment Affect Your Credit Score? - Experian.” *Experian Blog* (blog), February 19, 2020. <https://www.experian.com/blogs/ask-experian/does-a-one-day-late-payment-affect-your-credit-score/>.

³⁷ Federal Deposit Insurance Corporation. “Frequently Asked Questions for Bank Customers Affected by Coronavirus Disease 2019 (Referred to as COVID-19),” January 12, 2021. <https://www.fdic.gov/coronavirus/fa-q-customer.pdf>. See credit topic 20. “The FDIC is encouraging banks to allow customers to skip loan payments with no adverse consequences for the borrower, extend loan terms, and restructure loans.”

borrowers.³⁸ What did credit card debtors do? They paid down their revolving credit card debt. According to the Federal Reserve, “paydowns and prepayments rose to historically high levels by April 2021.” Revolving balances fell from \$460 billion in January 2020 to \$348 billion in April 2021.³⁹ These results occurred without a deterrent.

Credit card interest rates are risk-adjusted.

Interest rates on credit cards are designed to reflect the specific risks associated with providing unsecured revolving credit. Interest rates are further factored by the individual credit profiles of cardholders. For most consumers, the interest they pay on their revolving credit card debt exceeds any other credit source on their household balance sheet. The chance of delinquency should be accounted for in the cost of credit. In its rule, the CFPB was cognizant of this aspect. It recognized that the specific costs that arise from a late payment are associated with communicating with late payers.

Moreover, credit card issuers have ways to shield themselves from interest rate risk. When the Federal Reserve raised interest rates, issuers shifted the increase to consumers through upward repricing. Banks are free to lower interest rates when the Federal funds rate falls, but it is not clear that downward repricing happens as frequently as upward repricing.

Moreover, the late fees rule permits lenders to charge a fee even if they do not attempt to contact a late borrower. Many, if not most, credit card companies do not begin to contact borrowers as soon as the first payment has been missed. Most wait until a borrower has been delinquent for 30 days.

The rule only targets the largest issuers. The CFPB’s rule is an example of tailored regulation.

The CFPB’s credit card late fee rule will cover the thirty to thirty-five largest credit card issuers who collectively provide 95 percent of the active credit accounts in the country. However, it will not apply to more than 4,000 small issuers who issue smaller card portfolios. Over ninety percent of credit card-issuing banks and credit unions will be unaffected by the rule, which is narrowly focused on mega-bank profit centers.

The CFPB’s approach recognizes the differences in credit card programs at large issuers versus small ones.

Tailored regulation will still permit the CFPB to protect consumers in this market. In its review of terms of credit plans, the CFPB found that the 25 largest issuers charged consumers rates that were 8 to 10 percentage points higher than comparable customers would have paid at small- and medium-sized banks and credit unions. Interest rates were higher after controlling for credit tier. Large issuers were also more likely to charge annual fees.⁴⁰

³⁸ DePietro, Andrew. “Banks That Are Waiving Fees During Coronavirus.” *Forbes*, March 31, 2020. <https://www.forbes.com/sites/andrewdepietro/2020/03/31/banks-waiving-fees-covid-19/?sh=4750bfa1655>.

³⁹ Adams, Robert M., Vitaly M. Bord, and Bradley Katcher. “Why Did Credit Card Balances Decline So Much during the COVID-19 Pandemic,” December 3, 2021. <https://www.federalreserve.gov/econres/notes/feds-notes/why-did-credit-card-balances-decline-so-much-during-the-covid-19-pandemic-20211203.html>.

⁴⁰ Consumer Financial Protection Bureau. “CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions,” February 16, 2024. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-large-banks-charge-higher-credit-card-interest-rates-than-small-banks-and-credit-unions/>.

Competitive pressure is stronger between large issuers and other large issuers as opposed to between large issuers and small issuers.

Because of differences in how large issuers market cards compared to smaller issuers, there may be less direct competition between the two groups than might be expected. There are clear distinctions in the operating practices of the largest issuers compared to small and medium-sized institutions.

Large issuers compete against each other through paid advertising. Large issuers pay commissions to lead generation websites to identify new applicants. They pay data aggregators to give them lists of potential customers and then send unsolicited offers of credit. On top of those costs, they pay sign-up bonuses. Large issuers may spend hundreds of dollars for each new account. For ultra-prime customers, the total customer acquisition costs may exceed \$1,000.

For many smaller institutions, credit cards are offered in the context of a deeper financial relationship alongside a “bundle” of other services and products. Credit unions serve customers within their field of membership. For these smaller issuers, customer acquisition cost is virtually nil.

III. The CFPB’s proposed overdraft and non-sufficient funds (NSF) fees rule will enhance consumer protections and save consumers money.

In 2022, banks and credit unions with more than \$1 billion in assets charged \$7.7 billion in overdraft and NSF fees.⁴¹ In 2023, the sum fell to \$5.8 billion.⁴² While these are still very large amounts, they mark a significant reduction in overdraft fees. Over the five years before the pandemic, total overdraft fee charges ranged from \$11.8 billion to \$12.6 billion per year.⁴³

The CFPB’s overdraft proposal accomplishes the dual goals of reducing high-cost overdraft fees while still permitting ways for banks options to offer overdraft services to their customers.

The CFPB has offered a sensible proposal to reform overdraft credit. Under the proposed rule, covered financial institutions (depositories with more than \$10 billion in assets) can offer overdraft services under three potential structures. First, covered FIs may offer a standard “non-covered” courtesy overdraft product with a fee at or below a to-be-determined amount that is the “breakeven” level. The CFPB has proposed a rate of either \$3, \$6, \$7, or \$14 and will use input from commenters when completing the final rulemaking.⁴⁴ If a covered financial institution can show that its costs are higher, it may charge an amount as high as its demonstrated break-even cost.

⁴¹ Offices of Consumer Populations and Markets. “Overdraft/NSF Revenue down Nearly 50% versus Pre-Pandemic Levels.” Consumer Financial Protection Bureau, May 24, 2023. <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/>.

⁴² Offices of Markets and Consumer Populations. “Overdraft/NSF Revenue in 2023 Down More than 50% versus Pre-Pandemic Levels, Saving Consumers over \$6 Billion Annually.” Data Spotlight: Consumer Financial Protection Bureau, April 24, 2024. <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/>.

⁴³ Nagypál, Éva. “Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports.” Data Point. Consumer Financial Protection Bureau, December 2021.

⁴⁴ Offices of Markets and Consumer Populations. “Overdraft/NSF Revenue in 2023 down More than 50% versus Pre-Pandemic Levels, Saving Consumers over \$6 Billion Annually.” Data Spotlight: Consumer Financial Protection Bureau, April 24, 2024. <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/>.

The second option is for banks to offer overdrafts at prices above “breakeven,” with the condition that those services are regulated as credit and the costs are defined as finance charges. This will provide important protections, including APR disclosures, periodic statements, clearly identified payment due dates, and underwriting that is held accountable for considering a borrower's ability to repay the debts.

Lastly, they can provide a form of overdraft coverage that is linked to savings accounts or credit cards, including in a hybrid credit-debit card format.

If the structure outlined in the CFPB's proposed rule is finalized, covered overdraft services will become a source of well-regulated pro-consumer short-term credit. Consumers who have an overdraft line of credit or a hybrid credit-debit card will sign up for these services proactively. They will receive disclosures that clearly indicate the cost of credit in the form of an APR. Additional protections will apply to hybrid credit-debit cards that extend CARD Act provisions.

Contrast this with the nature of overdraft today, where it is often used by accident. Many consumers who pay overdraft fees have a credit card or another alternative source of credit.⁴⁵ This finding underscores how for many consumers, overdraft fee charges are “surprise” fees.

Many major banks have introduced new account policies that reduce or eliminate overdraft fees.

Several banks offer checking accounts without overdraft fees that do not have monthly maintenance, minimum balance, or other fees.^{46 47} Many other banks offer accounts without overdraft fees and other fees, provided the account receives a direct deposit every month.⁴⁸ These banks show that deposit accounts without overdraft fees can be offered without resorting to charging other fees.

While industry talking points that the loss of overdraft revenue would lead to raises in other types of fees, the evidence does not confirm this argument. In fact, revenues from maintenance and ATM fees have fallen at five of the nine largest banks. On average, revenues from similar sources fell.⁴⁹ The evidence that financial institutions can remain profitable without relying heavily on overdraft fee revenue – or to forego it entirely - demonstrates that fee caps will not make banking unsustainable.

A payment system that shifts the burden of cost to those least able to afford it is unjust.

⁴⁵ “Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel.” Office of Research Publication. Consumer Financial Protection Bureau, December 19, 2023. <https://www.consumerfinance.gov/data-research/research-reports/overdraft-and-nonsufficient-fund-fees-insights-from-the-making-ends-meet-survey-and-consumer-credit-panel/>.

⁴⁶ Capital One. “Online Checking Account | No-Fee 360 Checking.” Accessed May 4, 2024. <https://www.capitalone.com/bank/checking-accounts/online-checking-account/>.

⁴⁷ Discover Bank. “Free Checking Account - No Fee Cashback Debit | Discover.” Accessed May 4, 2024. <https://www.discover.com/online-banking/checking-account/>.

⁴⁸ “Checking Account | Open a Checking Account Online | Citi.Com.” Accessed May 4, 2024. <https://www.citi.com/banking/checking-account>.

⁴⁹ Offices of Markets and Consumer Populations. “Overdraft/NSF Revenue in 2023 down More than 50% versus Pre-Pandemic Levels, Saving Consumers over \$6 Billion Annually.” Data Spotlight: Consumer Financial Protection Bureau, April 24, 2024. <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/>.

It is a problem that too large a share of the fees paid by consumers for the cost of using a checking account come from penalty overdraft and NSF fees.⁵⁰ However, the problem is made worse because of how the costs are distributed. The burden is not shared equally. Only nine percent of account holders pay over 80 percent of overdraft fees. These accounts are, perhaps not surprisingly, held by low-wealth consumers. On average, the balances carried by those customers averaged \$350.⁵¹ A 2020 study estimated that “frequent overdrafters” (individuals who pay 10 or more per year) paid an average of \$720 per year in overdraft and other fees, while occasional overdrafters paid \$136 and non-overdrafters just \$57.⁵²

Broadly speaking, banks, regulators, and virtually all stakeholders in the payments system support financial inclusion through enhanced access to bank and credit union transaction accounts. However, as long as so much of the revenue comes from low-balance accounts, financial inclusion will be elusive. Late fees have a damaging effect on financial inclusion. One of the most common reasons given by unbanked and underbanked consumers for using alternative financial services and not having a bank account is the fear of incurring a surprise fee.⁵³

Notably, the number of unbanked and underbanked have fallen in recent years. This has occurred during a time when many financial institutions have eliminated NSF fees, reduced or eliminated overdraft fees, and implemented overage cushions.

Nonetheless, there is still more to do. Not all financial institutions have changed. If financial institutions insist on walking away from less-profitable customers if they cannot charge high surprise late fees, it will perpetuate financial exclusion. It is a dangerous rationalization. Nonetheless, if financial institutions will not act, then the proposed rule can be the changemaker. As such, the proposal is not just a step to improve consumer protections. It is also a financial inclusion solution.

Chartered financial institutions must be held accountable. As a condition of receiving a charter, banks must meet the community reinvestment needs of the communities where they do business. Providing safe transaction accounts has always qualified for CRA credit. Providing covered overdraft credit could be another qualifying activity for CRA credit.

Some banks and credit unions have established policies to maximize overdraft and NSF fees. The CFPB's intervention was necessary to compel them to improve their practices.

A subset of financial institutions have applied rules for overdraft and NSF that increased the number of times a consumer paid a fee. For example, some have charged overdraft fees on closed accounts⁵⁴ and may have, in some cases, re-opened accounts to accommodate new payment requests that led to new

⁵⁰ Transaction accounts generate revenue from sources not derived through fees to consumers. Depositories receive interchange from debit card swipes. While not a source of revenue, taking deposits creates value because they are a low-cost source of capital for banks. According to FFIEC Call Reports, other significant sources include maintenance fees, ATM fees, and other service fees.

⁵¹ Walsh, Mary Williams. “Banks Took \$11 Billion in Overdraft Fees in 2019, Group Says.” *The New York Times*, June 3, 2020, sec. Business. <https://www.nytimes.com/2020/06/03/business/banks-overdraft-fees.html>.

⁵² Stone, Corey, Dennis Chira, and Aaron Fine. “Beyond Overdraft: A Path to Replacing Unsustainable Revenue.” Oliver Wyman, 2020. <https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2020/jul/Beyond-Overdraft-Report-Finalpdf.pdf>.

⁵³ Federal Deposit Insurance Corporation. “How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey.” Washington, D.C.: Federal Deposit Insurance Corporation, December 17, 2021. <https://www.fdic.gov/analysis/household-survey/index.html>.

⁵⁴ Flitter, Emily. “Wells Fargo Closed Their Accounts, but the Fees Continued to Mount.” *The New York Times*, August 16, 2019, sec. Business. <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

charges.⁵⁵ Although less common now, high-to-low check ordering was a common policy at many banks and credit unions for many years. This practice maximized the number of overdraft fees from a series of debits.⁵⁶ Some institutions would represent a payment request within a short period of time – perhaps on the same business day – to trigger a second overdraft or NSF fee.

Overly complicated fee structures undermine consumers.

The complexity of when and how overdraft fees are applied contributes to the confusion. Terms and conditions of accounts are far from uniform across different banks. In a market scan of checking account overdraft policies completed in 2015, terms and conditions were shown to vary substantially. Some banks placed a ceiling of one overdraft charge per day, but others permitted as many as ten charges in a single day. Some had overage cushions. Twenty-six of 39 scanned institutions charged an extended overdraft fee, with variations in the number of days between the initial charge and the new one.⁵⁷ It is rare to find an indication of these fees published on a website outside of the fine print disclosures.

Not surprisingly, the chances of receiving an overdraft will vary considerably among similarly situated low-balance households depending on where they bank. FFIEC data shows that while low-balance customers paid, on average, just \$5.64 in fees at Citibank and \$9.07 at Capital One in 2019, respectively, low-balance households were charged \$56.98 and \$43.71, respectively, at Regions Bank and Citizens Bank.⁵⁸

By shifting away from “gotcha” fees, confidence in the banking system will grow among traditionally distrustful consumer segments.

Once overdraft credit is priced at rates that are reasonable and proportional to costs, banks will no longer have incentives to encourage consumers to experience overdrafts. Consumers who may have avoided banks before because of surprise fees or because they do not trust banks⁵⁹ may re-consider their view.

Banks rely on providing competitive deposit account services to attract deposits. Banks will find a way to offer overdraft services – even if it is not profitable – to attract depositors.

Contrary to the alarms raised by industry voices, financial institutions will not eliminate offering overdraft products. The CFPB notes that 23 million households paid an overdraft fee in 2022. If consumers want to use an overdraft, then banks will offer some form of it to ensure they maintain access to deposits.

⁵⁵ New, Catherine. “How Closed Is Your Bank Account?” *HuffPost*, February 10, 2012, sec. Business. https://www.huffpost.com/entry/zombie-checking-accounts- n_1245065.

⁵⁶ Douglas-Gabriel, Danielle. “Big Banks Have Been Gaming Your Overdraft Fees to Charge You More Money.” *Washington Post*, November 25, 2021. <https://www.washingtonpost.com/news/work/wp/2014/07/17/wells-fargo-to-make-changes-to-protect-customers-from-overdraft-fees/>.

⁵⁷ Rust, Adam. “How Banks Are Making Billions on Our Small-Dollar Mistakes.” Reinvestment Partners, September 3, 2015. https://reinvestmentpartners.org/file_download/inline/271c3f45-7ae9-42e0-bbbc-831f1693ec64.

⁵⁸ Klein, Aaron. “Getting Over Overdraft.” *Milken Institute Review*, October 31, 2022. <https://www.milkenreview.org/articles/getting-over-overdraft>.

⁵⁹ Federal Deposit Insurance Corporation. “How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey.” Washington, D.C.: Federal Deposit Insurance Corporation, December 17, 2021. <https://www.fdic.gov/analysis/household-survey/index.html>.

Because deposits are one of the lowest-cost sources of capital for banks, they are committed to developing attractive deposit account products. Deposits enhance the stability of financial institutions, both in terms of their soundness against runs and as the basis for long-term organic growth. A recent study found that US adults have, on average, used the same checking account for more than 17 years.⁶⁰ If the claims made by banks that consumers value overdraft services are correct,⁶¹ then the industry will find a way to work within the structure of covered and non-covered overdraft products.

Retail deposits are safer than large-dollar uninsured deposit balances. With few exceptions, consumers do not store more than \$250,000 in deposits in their checking accounts. As a result, almost all consumer deposits are fully insured. The closure of several banks in the spring of 2023 due to overly high concentrations of uninsured deposits affirmed the importance of retail deposits to banking franchises.

How overdraft fees destabilized the financial stability of a vulnerable consumer

The following account comes from an attorney representing a client who ultimately lost her home due to a cascading series of crises. The client's difficulties started when a scammer convinced her to send funds as a condition of receiving a sweepstakes payout. She lost her life savings of approximately \$10,000 to the scammer. At the time, she had arranged to pay her monthly dental bills and life insurance premiums through recurring ACH debits.

Joann Marie Given was 87 at the time and living on a monthly Social Security payment of less than \$1,200 per month. For the last eight years of her career, she worked as a cashier at a grocery store in Lawrence, Kansas.

When her recurring ACH debits failed because of a lack of good funds, her account was debited for ACH return charges and daily overdraft fees.

Her attorney commented:

"Joann Marie Given resided in Lawrence, Kansas, for 25 years before she lost her home following a predatory telephone scam which drained her savings and saw multiple overdraft and other bank fees tacked onto her [account]. Her inability to pay rent caused her to lose her subsidized housing and become homeless for a time. She was eventually able to find an apartment in another town in a nearby county (Tonganoxie, in Leavenworth County), but she misses Lawrence and is still trying to move back."⁶²

As is frequently the case, several of the challenges faced by lower-wealth households combined to create a crisis. Ms. Given lives in a state where landlords can begin eviction proceedings against tenants who have not paid rent in three days.⁶³

⁶⁰ Wisniewski, Mary. "Survey: Consumers Stick With Same Checking Account For 17 Years." *Bankrate*, January 4, 2022. <https://www.bankrate.com/banking/how-long-people-keep-their-checking-savings-accounts/>.

⁶¹ By Rob Nichols, President and CEO. "CFPB Proposed Rule to Limit Overdraft Protection." *American Bankers Association Press Release* (blog). Accessed May 4, 2024. <https://www.aba.com/about-us/press-room/press-releases/cfpb-proposed-rule-to-limit-overdraft-protection>.

⁶² Gaston, Rebekah. Email Interview, May 7, 2024.

⁶³ "Kansas Eviction Laws: The Process & Timeline In 2024," August 1, 2021. <https://www.doorloop.com/laws/kansas-eviction-process>.

If one of the covered overdraft structures listed in the proposed rule had been embedded in her account, Ms. Given may have been able to stay in her home.

The overdraft proposal will support pro-consumer competition in the marketplace.

At its core, the proposed rule establishes structures that will support competition. Rather than using business models that depend on deriving high shares of revenue from traditional “courtesy” overdraft fees, banks will have to compete on upfront prices and service quality. Consumers will benefit from upfront pricing of overdraft credit. In the end, it will increase consumer trust in banking.

IV. Junk fees exist in many contexts. Consumers are paying to pay and paying to access their cash. Regulation and enforcement by the CFPB have addressed some harmful practices, including by repeat offenders, but junk fees continue to proliferate.

Credit card late fees, rental housing, and overdraft fees are only part of a broader problem. Junk fees are being charged for many types of financial services. Consumers are being “nickel and dimed.”

Fees to receive an immediate payment.

Some companies are charging fees to disburse proceeds from short-term loans on the same business day as the loan approval. One area where this is occurring is earned wage advance (EWA) loans. By nature, EWA loans are supposed to meet short-term credit needs. They are issued against an employee’s next wage disbursement, either directly through an employer-facilitated program or indirectly through a third-party app that captures an employee’s banking details as a condition of the contract.

These are junk fees because they are charging a fee for a service that is essentially free to the provider. Same-day automated clearing house payment requests cost less than ten cents to the sending bank. Participating financial institutions can process an immediate real-time payment through the Clearing House Real-Time Payments Network or Fed Now for 4.5 cents.⁶⁴ In spite of that, several EWA providers charge between \$1.99 and \$3.99 to provide funds to consumers on the same day.⁶⁵

Convenience fees to pay a bill online or by phone.

For debt collections: Under the Fair Debt Collection Practices Act, debt collectors are not permitted to charge “any amount, including any interest fee, or expense incidental to the principal obligation.”⁶⁶ The CFPB has provided guidance and an advisory opinion⁶⁷ to resolve any lack of clarity on the subject. Some debt collectors had been charging fees to receive payments.

For student meal accounts: The CFPB found that some online payment platforms were adding a per-transaction fee for parents of students in kindergarten through 12th grade but did not disclose the existence

⁶⁴ Board of Governors of the Federal Reserve. “FedNow Service 2024 Fee Schedule.” Accessed September 13, 2023. <https://www.frbservices.org/resources/fees/fednow-2024>.

⁶⁵ Millerbernd, Annie. “What Is Earned Wage Access? Earned Wage Access Is a Company Benefit That Lets Employees Request Part of Their Paycheck before Payday.” *NerdWallet* (blog), November 9, 2023. <https://www.nerdwallet.com/article/loans/personal-loans/what-is-earned-wage-access>.

⁶⁶ FDCPA section 808(1)

⁶⁷ Consumer Financial Protection Bureau. “Advisory Opinion: Debt Collection Practices (Regulation F); Pay-to-Pay Fees,” June 2022. https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf.

of a free alternative. This contradicted a rule that says all districts receiving federal school meal programs must provide a fee-free option.⁶⁸

Fees to send money to incarcerated individuals.

Friends and relatives of incarcerated individuals cannot choose the provider through whom they send money to fund a commissary account. Instead, these providers sign exclusive contracts with prisons, penitentiaries, and jails.

Not surprisingly, a system without choice has permitted junk fees to flourish.

Release cards, also chosen through exclusive contracts with correctional institutions, would further drain funds. Upon release, prisoners would receive their “gate money” and outstanding commissary balances on prepaid “release” cards. These cards may have had high fees as well, including fees to withdraw cash and inactivity fees.

In 2021, the CFPB took action against one company to prevent these practices. As a result of the CFPB’s order, the company will not be able to charge fees to release card accounts, with the exception of applying an inactivity fee after 90 days.⁶⁹

Nonetheless, the same company still charges very high fees to send money. Exact amounts vary according to the contract negotiated by the money transmitter and the correctional institution. For example, it costs \$9.95 to send \$200 to an inmate’s account at a federal prison.⁷⁰ As the funds are sent by ACH, the cost to the provider is less than ten cents. In our view, it is unlikely the fees could be so high if it were not for the fact that a third party determines the prices paid by consumers. Even worse, in some cases, a portion of the fee goes back to the state correctional institution.

Junk fees charged by student loan servicers

The CFPB found that some student loan servicers were holding students accountable when they failed to honor their policies for accepting payments by credit cards. Customer service representatives accepted credit card payments over the phone. When a subsequent check by the company rejected those payments, the servicers reversed the payments and charged a special fee for doing so. These practices meet the unfairness standard, as consumers could not have avoided the harm and there was not a benefit to the consumer or to competition.

Fees to Access Basic Information about Bank Accounts

Some financial institutions charge consumers when they ask for basic but essential account information. This information may be needed to dispute unauthorized transactions on their accounts, understand why their accounts have been frozen, or see records of who fraudulently cashed checks and money orders from

⁶⁸ “Junk Fees Update Special Edition.” Supervisory Highlights, Fall 2023. https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf.

⁶⁹ Consumer Financial Protection Bureau. “CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-Enter Society After Incarceration,” October 19, 2021. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

⁷⁰ LLC, JPay, and JPay LLC Support@JPAY.com. “Available JPay Services Send Money Rates.” JPay LLC. Accessed May 5, 2024. <https://www.jpays.com>.

their accounts. Relatedly, some consumers indicate they have been charged fees to verify that disputed transactions were credited back to their accounts.⁷¹

The CFPB discovered that some financial institutions would charge an account a fee if paper statements were returned undelivered. Because this practice did not benefit the consumer or competition and because the consumer could not have known these fees were being charged because statements were not being delivered, the CFPB clarified that it was unfair.

Captive arrangements in health savings accounts

In environments where consumers do not have control over the choice of their financial provider, they often end up having to pay junk fees. Health savings accounts are one example. In some arrangements, employers pick health savings accounts for their employees. These accounts work with employer payroll systems. They receive funds through transfers of pre-tax wages from employers to affiliated debit card accounts. Some health savings accounts charge unusual fees. Such fees can include monthly maintenance fees, paper statement fees, outbound transfer fees, and fees to close an account. If a consumer does switch accounts, there may be “exit” fees.⁷²

Junk Fees Associated with Loan Servicing: Auto loan servicing

CFPB examiners have found cases where auto loan servicers applied unfair junk fees to deposit accounts. Unlawful practices stemmed from procedural failures to keep correct records to illegal seizure of cards and ransoming of personal property found in repossessed cars.

For example, some services debit accounts for over \$1,000 when they repossessed cars but then returned them after the consumer became current. They charged these high penalty fees even though the actual cost to the servicers was closer to \$350.

As has occurred elsewhere, it was also a business practice to extract profits from processing payments. Sometimes payment processors paid kickbacks to the servicers.

Junk Fees Associated with Loan Servicing: Payday Lending

Many states have laws requiring payday lenders to offer free repayment plans.⁷³ Payday lenders have used junk fees to extract profits from borrowers who have entered repayment plans. These harms occurred in states where payday lenders are required to offer no-cost extended repayment plans. They also found cases where ACE attempted to debit accounts more times than permitted by their agreements with borrowers.

⁷¹ For an example: Mobilization for Justice. “RE: [Docket No. CFPB-2022-0040] Request for Information Regarding Relationship Banking and Customer Service,” July 21, 2022. file:///C:/Users/AdamRust/Downloads/CFPB-2022-0040-0051_attachment_2.pdf.

⁷² “CFPB Highlights the Hidden Costs of Health Savings Accounts.” Issue Spotlight. Consumer Financial Protection Bureau, May 1, 2024. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-highlights-the-hidden-costs-of-health-savings-accounts/>.

⁷³ Consumer Financial Protection Bureau. “CFPB Finds Payday Borrowers Continue to Pay Significant Rollover Fees Despite State-Level Protections and Payment Plans.” Market Snapshot, April 6, 2022. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-payday-borrowers-continue-to-pay-significant-rollover-fees-despite-state-level-protections-and-payment-plans/>.

In July 2022, the CFPB took action against ACE Cash Express, a notable repeat offender, for concealing the right of borrowers to participate in a free extended repayment plan. The CFPB sued ACE Cash Express.⁷⁴

Fees to withdraw cash at the point of sale

Many financial institutions have opted to reduce the number of branches they operate. Closures have been felt most acutely in rural and inner-city areas. Areas where branch closures have occurred are more likely to be poorer, to be composed of residents with fewer years of education, to be rural, and to have a greater proportion of Black households.⁷⁵ The loss of bank branches has had a dramatic effect in limiting access to banking services in communities of color.⁷⁶

One result of the loss of branches has been to create “cash deserts.” Without access to a bank ATM, have had few options to get cash. In rural areas, this has meant that consumers must drive longer distances to find an ATM. As an alternative, many have turned to local grocery and “dollar” stores. Historically, these outlets have offered cashback at the point of sale for free. However, in recent years, junk fees have gained a foothold here. Stores now charge 50 cents to one dollar to customers who ask for cash back at the point of sale.⁷⁷ The lack of access to branches and ATMs has created consumers who are vulnerable to price hikes. This vulnerability is ultimately a reflection of the lack of commitment by some financial institutions to meet the needs of low-wealth communities.

Part Three: The CARD Act shows how consumer financial protection can benefit consumers and competition.

The Credit Card Accountability Responsibility and Disclosure Act (“CARD Act”) reformed credit card markets. It improved consumer protections for credit card markets without compromising access to credit.

The law sought to “establish fair and transparent practices related to the extension of credit under an open-end consumer credit plan.” Its provisions removed several deceptive practices from the market that had been prevalent until then. It required that companies give consumers at least 21 days to pay their bills, prohibited retroactive interest rate increases, placed restrictions on the amount of fees that can be charged in an account’s first year, required issuers to credit payments to debt with the highest rates of interest, and prevented sudden interest rate increases. It added an ability-to-repay standard and imposed opt-in requirements for over-limit fees.

⁷⁴ Consumer Financial Protection Bureau. “CFPB Sues ACE Cash Express for Concealing No-Cost Repayment Plans and Improperly Withdrawing Consumers’ Funds,” July 12, 2022. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-ace-cash-express-for-concealing-no-cost-repayment-plans-and-improperly-withdrawing-consumers-funds/>

⁷⁵ Board of Governors of the Federal Reserve. “Perspectives from Main Street: Bank Branch Access in Rural Communities.” Washington, D.C., November 2019. <https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf>

⁷⁶ Kristen E. Broady, Mac McComas, and Amine Ouazad. “An Analysis of Financial Institutions in Black-Majority Communities: Black Borrowers and Depositors Face Considerable Challenges in Accessing Banking Services.” *Brookings* (blog), November 2, 2021. <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>

⁷⁷ Rubino, Joe. “King Soopers, Kroger to Charge 50-Cent Fee for Cash Back.” *Denver Post*, December 11, 2019. <https://www.denverpost.com/2019/12/10/king-soopers-and-krogers-new-50-cent-fee-for-cash-back-is-a-small-charge-that-could-really-add-up/>

The CARD Act also curtailed harmful practices for deep subprime accounts. The fee harvester provision addressed some of the most abusive subprime credit card issuing practices. In the runup to the financial crisis, a small segment of banks and non-bank technology providers marketed cards with small lines of credit and high fees. For example, the typical initial credit limit of an “Imagine Gold MasterCard” was \$250. However, as a condition of opening the account, the consumer spent almost that much in fees. The bank charged a \$50 annual fee, a \$119 acceptance fee, and a \$6 monthly participation fee. As a result, new accounts only had \$75 in remaining credit. If the account holder spent more than the remainder of the line, they incurred a \$29 over-limit fee.⁷⁸

The CARD Act included two new protections related to late payments. First, it prevented “universal default” clauses, where an issuer could raise the interest rate of an open account, including on existing balances if the account holder missed a payment with a different creditor. Second, it placed a cap on the amount of late fees and created a standard that all late fees or over-limit fees should be “reasonable and proportional” to the relevant violation.

The CARD Act reduced the cost of credit

By 2012, the industry had largely stopped charging over-limit fees and repricing actions. The average over-limit charge had been \$34.80.⁷⁹ Interestingly, banks responded to the restrictions on over-limit fees by largely abolishing them or ceasing to charge them when consumers spent beyond their limit. Whereas in 2008, 16.4 percent of accounts had an incidence of going over the credit limit, and slightly less than half of those incidences led to a fee, in 2012, only 12.8 percent of accounts went over the limit, and just 3.4 percent of those instances led to a fee. As a result, the share of accounts charged with an over-limit fee fell almost twenty-fold.⁸⁰ The CFPB estimated that the CARD Act saved consumers \$9 billion in foregone fees between 2011 and 2014.⁸¹

By 2013, it was apparent that the CARD Act would have the effect of lowering the cost of credit, and the trend continued in the years to come. Interest rates charged on cards had fallen by two percentage points.⁸²

As is the case now, trade groups protested against the rule. They insisted that new consumer protections would have negative impacts and emphasized that consumers would bear the costs. The industry emphasized how the CARD Act would lead to fewer rewards on cards.⁸³ Trade associations said that current existing regulations were fine, consumers understood disclosures as structured, pricing was

⁷⁸ Jurgens, Rick, and Chi Chi Wu. “Fee-Harvesters: Low-Credit, High Cost Cards Bleed Consumers.” National Consumer Law Center, November 2007. <https://www.nclc.org/wp-content/uploads/2022/09/fee-harvesters-report.pdf>

⁷⁹ Consumer Financial Protection Bureau. “CARD Act Report: A Review of the Impact of the CARD Act on the Consumer Credit Card Market,” September 2013. <https://www.consumerfinance.gov/data-research/research-reports/card-act-report/>.

⁸⁰ *ibid*

⁸¹ *ibid*

⁸² *ibid*

⁸³ White, Martha. “Wall Street Still Wants You to Think the CARD Act Is Bad.” AOL Business, May 7, 2024. <https://www.aol.com/news/2010-02-18-wall-street-still-wants-you-to-think-the-card-act-is-bad.html>.

appropriate to risk, and new protections would reduce access to credit.⁸⁴ The industry claimed that the loss of fee revenue would reduce credit availability and lead to fee increases. The same claims are being made today about the credit card late fee rule. They are not defensible.

Credit card credit remained available after the implementation of the CARD Act.

The CARD Act did not compromise access to credit.

Credit card companies continued to seek to offer credit to new customers. The number of credit card solicitations sent in the mail (a metric of real-time supply of credit) surged. Whereas approximately 210 million solicitations were sent in q1 2010, almost twice as many were sent out in each of the second and third quarters of 2011. One uncertainty about these findings is the extent to which solicitations became less representative of demand over time due to increased marketing through online channels. However, if this is true, it only strengthens the conclusion about the market's vitality post-CARD Act.

Credit card companies continued to approve applicants. New openings of general-purpose credit cards (not private label) rebounded. Most of the gains occurred early on. In 2011 and 2012, new originations were almost the same.

Approval rates for all credit tiers came back after falling off during the financial crisis. Reflecting newfound conservatism, approval rates for all credit tiers were still not as high as during the period of freely-available credit before the financial crisis.

The total amount of available credit grew from \$3.25 trillion in early 2012 to \$3.5 trillion in early 2015. This represented a ten percent increase in available credit card credit lines.⁸⁵

Curbing "back-end" fees led to a market with greater pricing transparency.

The market became more transparent, as well. Credit card agreements became shorter. Because back-end fees declined, it was easier for consumers to understand the true cost of credit. Interest rates and annual fees increased slightly, reflecting a shift toward upfront pricing and away from surprise back-end fees. Combined, the cost of credit (interest and fees as a percentage of outstanding balances) declined by almost 200 basis points.

When CARD Act protections made it harder for banks to apply high-cost back-end fees, the market shifted in favor of greater transparency.

Applying limits to back-end fees did not raise the cost of credit or result in real increases in annual fees.

While the number and amount of late and over-limit fees fell, card issuers did increase the average annual fee. However, the rate of the increase was less than two dollars, representing a price gain that fell below the rate of inflation. Moreover, as the CFPB points out, a market where fees are charged upfront through

⁸⁴ Feddis, Nessa. Interviews - Nessa Feddis - The Card Game. PBS Frontline, September 15, 2009. <https://www.pbs.org/wgbh/pages/frontline/creditcards/interviews/feddis.html>.

⁸⁵ Consumer Financial Protection Bureau. "CFPB Finds CARD Act Helped Consumers Avoid More Than \$16 Billion in Gotcha Credit Card Fees," December 3, 2015. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-card-act-helped-consumers-avoid-more-than-16-billion-in-gotcha-credit-card-fees/>.

annual fees is inherently more transparent compared to one where a higher share of fees are derived from “back-end” fees.⁸⁶

Despite the loss of over-limit fees, issuers did not increase other penalty fees. After the rule was implemented, the average credit card late fee fell from \$33.08 in 2008 to \$23.13 in 2010.⁸⁷

The CARD Act shows how the introduction of consumer protections will foster healthy markets.

Conclusion

Thank you for the opportunity to call attention to the issue of junk fees. Today, consumers transact in a marketplace where they are “nickel and dimed” repeatedly. It is a financial crisis of thousands of nicks and cuts. In financial services, consumers are paying to use their money or to access their money. When they make a mistake, they are punished by fees that are priced well beyond the cost to companies. The system is harmful to everyone but more harmful to vulnerable low-wealth consumers and consumers of color.

The CFPB’s campaign against junk fees will help consumers save money. The Consumer Federation of America is strongly supportive of the credit card late fees rule. Similarly, the CFPB should go ahead with its strong overdraft proposed rule because it prioritizes consumers above large financial institutions. It is also important to restate how the CFPB has tailored these rules carefully. The credit card late fees rule will only cover the largest issuers. As proposed, its overdraft rules will cover institutions with more than \$10 billion in assets.

The Consumer Federation of America believes that a whole-of-government approach to junk fees can right the balance of power between consumers and sellers. When consumers shop for financial services or seek to rent a home, they will benefit from these initiatives. When making decisions to use a financial service or rent a home, consumers will be better able to comparison shop. The end goal of policymakers should be to encourage markets where price signals work because prices are all-in and disclosed upfront. Consumers deserve to keep their money. Moreover, for businesses that have been transparent and fair, these changes will put them on equal footing with their competitors.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Adam Rust
Director of Financial Services
Consumer Federation of America

⁸⁶ Consumer Financial Protection Bureau. “Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees,” January 26, 2022. <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>.

⁸⁷ Consumer Financial Protection Bureau. “CARD Act Report: A Review of the Impact of the CARD Act on the Consumer Credit Card Market,” September 2013. <https://www.consumerfinance.gov/data-research/research-reports/card-act-report/>.

PREPARED STATEMENT OF KAREN MADRY

PRESIDENT AND CHIEF EXECUTIVE OFFICER, AFENA FEDERAL CREDIT UNION

MAY 9, 2024

Introduction and Mission

Good morning and thank you for the opportunity to share my story. My name is Karen Madry, and I serve as the President and CEO of Afena Federal Credit Union (Afena), located in Marion, Indiana. We are a federally chartered, low-income designated credit union with \$99 million in assets and 3 branches serving over 8,000 members in central Indiana. In 2019 Afena was certified as a Community Development Financial Institution (CDFI). As Grant County's only CDFI, Afena is mission-focused on increasing financial inclusion among the under-served and financially challenged individuals in our community. With the support of our many community partnerships, we continue to develop products, services, and programs that are specially designed to empower low-income and financially underserved people and families and help them enter the financial mainstream.

More than 70 percent of families in Grant County, Indiana, one of the main areas within Afena's field of membership, live below the poverty line and face difficult financial decisions every day. I do not have to imagine the struggles that so many members of my community face—I have experienced them myself. Years ago, having survived an abusive relationship, filing for bankruptcy, and on the verge of homelessness, I once found myself living at the poverty level. Overcoming this adversity through years of hard work and dedication to my community has led me to where I am today—building empathy and trust with the members we serve to ensure they too can avoid future financial pitfalls within their life's journey.

A core part of our mission at Afena is to empower our members through financial education and help them understand how to make wise money management decisions that will have a dramatic impact on their future and their ability to build generational wealth. We want to put our members on a path to financial health and well-being so that they can leave a legacy they are proud of for the people who come after them. Furthermore, in times of economic distress or personal hardship for our members, we offer assistance through several methods including low-interest loans, fee waivers, and flexible payment options. We are also proud to partner with several community banks in the region to ensure customers who may not fit the risk profiles of banks can be referred to Afena for their financial needs, which will further decrease unbanked populations in our region.

In addition to the variety of free and low-cost routine banking services we provide, Afena is proud to offer unique lending options that help families maintain their financial stability and improve their quality of life through affordable home improvement loans. Over 70 percent of the loans Afena approves are to families considered to be low- and moderate-income (LMI), with an average credit score of 560–570. Over the last 3 years, the credit union's loan portfolio achieved double-digit growth.

Born through a collaborative effort with the Community Foundation of Grant County, Afena's Bridge the Gap Loan program is designed as a safe, affordable alternative short term loan program. Through this program, Afena provides small-dollar, low-interest loans with flexible terms specifically for low-income families. These loans are designed to help borrowers build good credit, grow their emergency savings, and improve their financial literacy. Each participant receives free personalized coaching from Afena's certified financial counselors to set them on a path toward financial wellness.

While credit unions nationwide have continued to grow over the past few years, now serving over 140 million consumers, the vast majority are small institutions with limited resources, like Afena. The unique and impactful financial assistance services we provide for our members are under threat with mounting regulatory requirements and expectations from Federal regulators. These high levels of regulatory burden are hampering many credit unions from fulfilling their mission of serving LMI Americans. We support tailored and rightsized regulation that accounts for the varying size and complexity of financial institutions, especially community-based, not-for-profit institutions like Afena. Credit unions always put their members first and prudent use of member resources is critical. Diverting those resources toward meeting excessive regulatory requirements has ripple effects, one of the more prominent being a trend toward industry consolidation. This result, ironically, threatens consumer access to credit, disproportionately impacts LMI communities, and strains the entire industry. This unintended consequence of excessive regulatory burden is felt across all small community-based financial institutions, and the people they serve, who are often unable to be banked at other financial institutions.

I look forward to sharing how Afena's unique approach to serving the financial needs of my community may be hindered by recent changes made to the financial services regulatory landscape.

The Credit Union Mission

Credit unions are the original consumer financial protectors because of our not-for-profit, member-owned cooperative structure that aligns the interest of the credit union with its members. Credit unions like mine serve a unique purpose in the financial services marketplace, helping diverse and underserved populations gain access to safe, reliable, and affordable retail banking services. This distinction, combined with a track record of providing consumer-friendly financial services, is a key reason that rules and regulations should be tailored so they are not overly burdensome on credit unions.

Credit unions play an essential role in helping individuals, small businesses, and communities prosper by assisting with daily financial management and fostering stronger financial futures. Credit unions continue to offer members affordable interest rates, which keep monthly payments lower. The median interest rate for a 30-year mortgage for near-prime borrowers at a credit union in December 2023 was 9.04 percent.

The median credit union interest rate for a \$40,000 auto loan with a 6-year term in December 2023 ranged from 7.33 percent for super prime borrowers to 11.38 percent for deep subprime borrowers. Using recent pricing differences, we found that credit unions save consumers with lower credit scores up to \$10,000 over the life of a typical car loan and as much as \$73,000 over the life of a typical home loan.¹

Member-ownership and not-for-profit status results in a wide range of pro-consumer credit union behaviors and substantial pro-social outcomes. Credit union members across the country recognize the real measurable "transformative power" associated with cooperative finance.

"Junk Fees"

In 2022, the CFPB launched an initiative to target standard fees charged by credit providers that included sensible payment guardrails such as overdraft and credit card late fees. This initiative has been mislabeled, with the CFPB calling lawful payment incentives "junk fees." These fees bear no resemblance to the type of hotel and resort fees referenced by others as "junk fees" and, in contrast, are all subject to comprehensive Federal or State laws and regulations that include clear and conspicuous consumer disclosures. Sensible payment guardrails are not unfair, deceptive, or abusive, and there are mechanisms in place to ensure consumers are well informed of the costs of these essential financial products.

Afena takes financial literacy and counseling seriously and addresses these fee costs head on with our members to ensure they build sustainable and fiscally responsible spending habits. For example, members have opportunities to have multiple overdraft fees waived if they meet with a staff member to get financial counseling.

The CFPB's guidance on these so-called "junk fees" falsely suggests that these fees are for the sole benefit of the financial institution. In practice, these fees are used to help the consumer make responsible financial decisions, cover short-term financial shortcomings, and encourage on-time payments or avoid violating the terms of financial agreements. These fees also enable companies to offset the costs of late payments and their associated risks so that they can continue to offer the financial products that people want and need, particularly to financially vulnerable communities and individuals trying to build credit. These products help many LMI communities and the nearly 26 million Americans who are credit invisible to begin their financial health journeys.

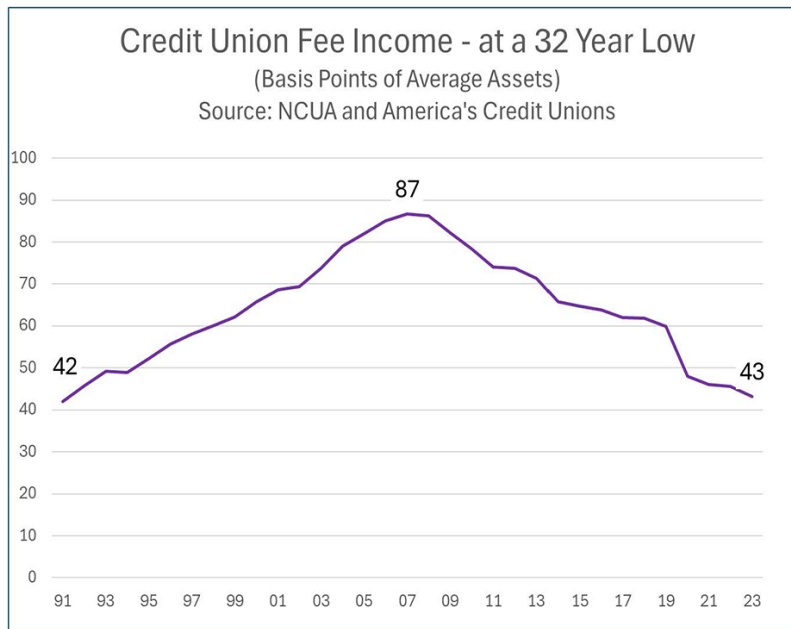
The characterization of these well-disclosed, regulated fees as "junk fees" and the conflation of member-driven financial institutions with financial bad actors has a very real, very harmful impact on the ability of credit unions to serve their members. If credit union members are consistently told by Federal regulators, and even the President, that their financial institution is out to get them, it will erode the trust and relationship-focused service that is so crucial to the credit union difference.

Furthermore, the reduction in fee revenue is especially onerous for small credit unions. Although there are often asset-based exemptions for rules, such as the overdraft proposed rule, market pressures create downstream impacts for all financial institutions. Small credit unions will struggle to find non-essential costs to cut in response to decreased revenue when these downward pressures emerge. We have

¹ Equifax Analytic Dataset and America's Credit Unions.

evidence of this from the implementation of Regulation II, where credit unions like mine were exempt from debit interchange caps, but we still saw an over 30 percent decrease in debit interchange revenue since the rule took effect. If burdensome regulation continues to make it more difficult for small financial institutions to operate, we will see fewer banking options, less competition, and higher prices. These results hurt consumers and are the opposite outcome of what the CFPB seeks to achieve.

Service fees for financial products enable credit unions to make financial services overall more affordable and more accessible for Americans, particularly those who are low income. It is important to recognize that fee income at credit unions is at a 32-year low, as evidenced by recent data published by the NCUA and America's Credit Unions (see Figure below). That means basic banking services are more affordable than they have been for a decade. A consumer can join a credit union and open checking and savings accounts, including an ATM card, for free. This is possible in part because of the move towards service fees, such as overdraft or late fees. Credit union members pay for the services they use, such as an overdraft program, which allows the credit union to keep basic services such as checking accounts low cost or free for their members. The cost of eliminating or reducing overdraft based on Government mandates instead of market forces is that credit unions like mine will have to raise prices for all members to replace that revenue, making basic banking services less affordable.



Finally, these regulations do not exist in a vacuum. My colleagues within the credit union movement feel as though their revenue on all fronts is being questioned in a manner that fails to recognize the ever-increasing costs of operating a modern, safe, and secure financial institution. As new restrictions on fee income move through the regulatory process there will undoubtedly be a shift in cost-structures that will increase the cost of credit and lower the value proposition that credit unions offer their communities. Credit unions want the Bureau to know that they embody the pro-consumer, relationship banking ethos that the Bureau celebrates, but they feel that the Bureau is not recognizing how difficult the operating environment is becoming.

Overdraft Rule

One of the most recent attacks on well-disclosed, regulated fees is the CFPB's proposed rule to amend Regulations E and Z, specifically as it relates to updating regulatory exceptions for overdraft credit provided by financial institutions with more than \$10 billion in assets. As a credit union with less than \$10 billion in assets,

we are deeply committed to our mission of promoting financial inclusion and providing affordable, accessible financial services to our members, many of whom are from underserved communities. We are concerned that the proposed rule, as currently drafted, may inadvertently undermine the ability of smaller financial institutions like ours to offer services that are critical to our members' financial well-being.

Like many other credit unions, Afena offers services tailored to assist our members in managing their finances effectively. We provide various options to cover instances where members unintentionally or intentionally overdraft their accounts, including checks, automatic payments, and debit card transactions. To meet the needs of our members, all of Afena's Member Service Representatives are authorized by management to refund up to \$100 in overdraft fees upon a member's first request, no questions asked. If a member requests a second refund in a 12-month period, we require them to complete a form and have a counseling session with a Loan Officer or a Member Service Representative. Our team uses their discretion to determine the appropriate amount of fees to refund based on the situation or hardship experienced by the member. Member Service Representatives on our team work diligently to counsel our members to understand the circumstances that led to the overdraft and how to help them prevent habitual use of this service in the future.

We prioritize compliant and user-friendly options for our checking account holders. Additionally, they can opt in to a service where our credit union covers the transaction temporarily, allowing the account to go negative until a deposit is made, albeit with a fee associated. This service, known as Courtesy Pay, is highly valued by our members. If a member's account is overdrawn and the member is not able to bring it current within the 45 days required by regulation, we may offer the member an opportunity to obtain an overdraft payback loan. These loans are generally offered to members whose accounts are overdrawn due to an unexpected life event and have a relatively low interest rate.

Our Courtesy Pay program ensures that members' checks and automatic payments are processed without disruption, preventing them from incurring additional expenses such as returned check fees. We also cover debit card transactions, ensuring that members can access necessities when needed, thus averting potential embarrassments at checkout counters or even critical situations like being unable to purchase groceries due to a shortfall in funds. Contrary to the suggestion that these services exploit consumers, consumers greatly appreciate the option to ensure their transactions are completed. Without overdraft services as a financial lifeline, often bridging the gap between paychecks and covering essential expenses like utilities and groceries, important transactions would be declined. Declining such transactions could spark impacts, like increased fees, disrupted services, and financial insecurity. These potential impacts dwarf the relatively minor cost of an overdraft fee.

To ensure transparency and understanding, we maintain regular communication with members who use the Courtesy Pay service, providing detailed information about limits, fees, and how the service operates. Our members are well-informed and appreciate the clear terms under which overdraft services are offered, including the fees associated with these services. We often receive expressions of gratitude from members who appreciate the assistance these programs offer.

The utilization rate of our Courtesy Pay program stands at approximately 20 percent of our checking accounts monthly, with over 58 percent of account holders having access to all or part of the service as a precautionary measure. We observe a mix of regular and first-time users, and refund about 10 percent of fees, mainly to first-time users, as part of our commitment to supporting them through financial challenges.

The proposed rule's requirement to treat overdraft services as extensions of credit subject to Regulations E and Z, unless fees are nominal and only cover applicable costs and losses, although not directly applicable to smaller institutions, may force credit unions like ours to significantly alter or eliminate these services. As regulatory mandates reduce or remove the prevalence of overdraft services for the largest financial institutions, market pressures will necessitate that smaller credit unions alter their overdraft programs in response. Without the ability to benefit from the same economies of scale that might allow larger institutions to weather a reduction in fee revenue, these changes could make it unsustainable for smaller institutions to offer overdraft protection, disproportionately affecting those who rely on it the most.

All 4,700 credit unions across the country are unique and serve their fields of membership in the best way they see fit for the benefit of their communities. We believe that financial institutions should retain the flexibility to set fees for services like overdraft protection. This flexibility allows us to tailor our services to the needs of our diverse membership, balancing the need to cover costs and manage risk with the commitment to keeping our products and services affordable. A blanket ap-

proach in which above breakeven overdraft is deemed open-ended credit does not account for the downstream impacts to smaller institutions and the unique circumstances of our credit union and varied needs of our members.

Moreover, the ability to set and adjust fees enables us to innovate and introduce new services that can help members manage their finances more effectively, such as convenient money management tools or low-cost, short-term credit options that can serve as alternatives to traditional overdraft protection. If the proposed rule drives down the average overdraft fee, these innovations would be at risk.

Instead of imposing restrictive fee structures, we advocate for a greater emphasis on financial literacy and education efforts. Many consumers benefit from overdraft services because they rely on these financial lifelines to pay for purchases during moments of sudden need or between paychecks. Although a small subset of these consumers may become overly reliant on overdraft services, the solution should not be to regulate it out of existence, but rather to help equip consumers with the resources to take control of their financial futures. Several institutions report that some members knowingly want to use this service regularly and have indicated that they are willing to change institutions if it is not available. Afena's members have told us that they do not always trust themselves to pay off credit products and would rather pay a one-time fee like overdraft. We believe the focus should be on investing in comprehensive financial education programs that can empower consumers to make informed decisions about their money, reduce reliance on overdraft services, understand other options available, and improve their overall financial health.

Afena is deeply committed to financial education, offering workshops, online resources, and one-on-one counseling to help our members build budgeting skills, understand credit, and plan for their financial futures, including retirement or their children's education. We believe that expanding these efforts, with support from regulators and policymakers, can have a profound impact on financial inclusion and consumer well-being.

America's Credit Unions believes that the proposed rule on overdraft credit may have unintended consequences that could hinder credit unions' ability to serve their members effectively. We urge the CFPB to consider the unique role of smaller financial institutions in promoting financial inclusion and to rescind the rule and support a paradigm that balances consumer protection with the need for flexibility and innovation in financial services. Instead of imposing a rule on overdraft fees with industry-wide implications, we encourage the CFPB to support efforts to enhance financial literacy and empower consumers to make informed financial decisions. By working together, we can ensure that all consumers have access to affordable, responsible financial services that meet their needs and support their long-term financial health.

Credit Card Late Fees

We object to the CFPB's final rule to amend Regulation Z to slash credit card late fees from the current limits to \$8 for large issuers with over one million open accounts. The rule aims to ensure these late fees are "reasonable and proportional" to assist LMI borrowers in better managing their debt. However, the rule will instead result in reduced competition in the credit card market, further consolidation among community-based financial institutions, and reduced access to credit for vulnerable and underserved communities. The current regulatory structure and safe harbor limits for credit card late fees have resulted in clear disclosures to consumers, providing ample opportunity for comparison shopping, and a deterrence effect that encourages consumers to make timely payments on their accounts. An \$8 late fee does nothing to encourage responsible consumer behavior. It may even encourage greater delinquencies on unsecured credit card portfolios, leading to potential safety and soundness concerns. We would note that various governmental entities, including the Federal Government, set late fees well above that \$8 level for a wide range of payments.

This drastically reduced safe harbor limit is not only arbitrary but is also unlikely to reduce consumer indebtedness. In fact, this rule would have a disproportionate impact on LMI borrowers and those with thin credit files by limiting the availability of safe and affordable products and services. Although the majority of credit unions are not immediately impacted, similar to the CFPB's overdraft proposed rule, there will be a downstream effect on smaller institutions over time due to market pressures and changing consumer expectations. As a result, credit unions and other institutions will be forced to make difficult decisions about their offerings. Some smaller credit unions may be forced to reevaluate or eliminate their credit card programs altogether because the economics no longer work. Credit unions are also unique in that they are subject to an interest rate ceiling established under the Fed-

eral Credit Union Act (FCU Act). This statutory limitation further constrains credit unions' revenue options with respect to credit cards, whereas other institutions will likely increase their interest rates to compensate for reduced late fee revenue. We have already seen this trend toward increasing interest rates among larger issuers despite the pending legal challenge against the final rule. If credit unions like ours are forced to tighten their credit criteria or exit the credit card market because of this rule, the impact on underserved communities will be immeasurable.

We encourage you to exercise your oversight over this final rule as the CFPB's data and analysis were cursory at best and the Bureau did not seek the input of small financial institutions as required under the law.

NSF Rule/UDAAP

The uncertainty surrounding the abusiveness prong of unfair, deceptive, or abusive acts and practices (UDAAP) has been a source of concern for credit unions for many years. The recent proposed rule prohibiting nonsufficient funds (NSF) fees on instantaneously declined transactions puts the logic of the Bureau's 2023 Policy Statement on Abusive Acts or Practices into action, and we are troubled by the Bureau's interpretation regarding the test for abusive conduct. Specifically, that conduct is abusive if it takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service. But in the Bureau's interpretation, there is no requirement that the consumer's lack of understanding be reasonable, and the Bureau unreasonably concludes that the fact that a consumer decides to take a risk must necessarily mean that the consumer did not understand the risk.

If a consumer chose to initiate a transaction even though they were uncertain if they had sufficient funds, it does not necessarily mean that they lacked understanding of the risk. It could just as easily mean the consumer understood the risks and chose to initiate the transaction anyway, hoping that their account had sufficient funds. Through this interpretation, the Bureau has removed all responsibility from the consumer and shifted the burden entirely to financial institutions. Furthermore, it has created a situation in which any product or service could be deemed too complex for a consumer to understand, and if a financial institution charges a fee in relation to that product or service, it could be subject to an allegation that it violated the abusiveness prong of UDAAP.

This interpretation will chill innovation and place credit unions in a position where they will be extremely hesitant to offer new products or services to their members, for fear that they might be considered abusive. Smaller credit unions that cannot afford to take the risk of UDAAP enforcements will be incentivized to only offer the most basic services, further reducing their ability to compete.

We urge the Bureau to issue a rulemaking to further define the abusiveness standard and work to ensure an equitable framework that recognizes the role of financial responsibility for consumers as much as it does the responsibility of their financial institution. While any guidance or additional clarity is crucial to providing credit unions with the rules of the road when it comes to UDAAP, a single policy statement with overly broad prohibitions is insufficient. A rulemaking to further define abusiveness through the notice and comment rulemaking process would give financial institutions confidence in the knowledge that an act or practice is or is not abusive and would allow the entities that are governed by UDAAP to better understand their obligations under those prohibitions.

CFPB Governance Modernization

America's Credit Unions believes that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current leadership of the Bureau, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court highlighted this fact when it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found the single director, removal only for "just cause" structure of the CFPB to be unconstitutional.² It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission. We support legislative efforts that would improve the Bureau by making this change. Unfortunately, under the current structure, the CFPB has missed many opportunities to leverage

² *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. _____ (2020).

credit unions' mission and history to the benefit of consumers and finalized regulations that ultimately hampered credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activity the CFPB's rules were designed to curtail. Under Director Rohit Chopra's leadership, the Bureau has yet again missed numerous opportunities to recalibrate its approach to regulation in a manner that fulfills its consumer protection mission without impeding consumers' access to credit or safe and affordable financial products and services.

Principles That Should Guide CFPB Rulemaking

We would like to take this opportunity to highlight for Congress several key principles we believe should guide any CFPB action. These principles were developed in consultation with members of America's Credit Unions.

- Use the Bureau's authority in a manner consistent with the original purpose of the CFPB and the spirit of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)

The Bureau should dedicate most of its time and resources to unregulated and under-regulated entities. If the Bureau spent fewer resources on regulating and supervising credit unions and other lenders subject to Federal prudential regulation, then it would have more available to focus on unregulated institutions and the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections.

Credit unions remain some of the most regulated entities in the country. Despite our pro-consumer history, credit unions have repeatedly been lumped in with others through the promulgation of overly broad rulemakings, increasing compliance costs without a material benefit for consumers. In fact, the increasing cost and complexity of regulatory compliance remains a contributing factor in the significant consolidation taking place among community-based financial institutions. Ultimately, consumers lose when fewer choices are in the marketplace, resulting in a higher cost of financial services and reduced access to local community-based providers.

- Appropriately tailor regulations to reduce disruption for community-based financial institutions

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the Dodd-Frank Act to authorize the Bureau to tailor its rules to avoid adverse outcomes for consumers and regulated entities. Congress deliberately provided this express authority in Section 1022 of the Dodd-Frank Act:

The Bureau, by rule, may conditionally or unconditionally exempt *any class of covered persons*, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title (Emphasis added).

These words are unambiguous, and Congress clearly granted the Bureau broad authority to tailor regulations in a manner consistent with the best interest of consumers. We appreciate that the Bureau has used its Section 1022 authority in some rulemakings to create exemptions based on asset size, loan volume, the merits of a specific product, or other factors. However, we believe the Bureau should use its exemption authority more consistently and to greater effect.

Credit unions and Credit Union Service Organizations (CUSOs) should be considered for and receive appropriate exemptions from some of the Bureau's regulatory requirements. It is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to carefully consider the downstream impact of its rules and how those rules—without appropriate tailoring—could negatively affect the ability of consumers to access financial products and services from reputable, community-based financial institutions.

- Be consistent and transparent during the development and implementation of rulemakings and supervision and enforcement policies

The current CFPB structure vests substantial authority with the Director. It is critical for the CFPB Director to avoid disrupting the efficient functioning of markets due to unnecessary secrecy, surprise regulation, "gotcha" enforcement, or the pursuit of political goals. Often, it is consumers themselves that are negatively affected by opaque, abrupt, or extreme changes in policy from one Administration to the next.

We believe the CFPB should emphasize regular and open communication with financial services providers and be transparent during the policymaking process. An open communication posture would generate goodwill with industry and further both consumer protections and proper due process. To that end, we are ready and willing to assist in communicating and amplifying any critical information from the Bureau to credit unions and their members. We are also at the Bureau's disposal to solicit feedback from our members, as stakeholder input is critical to an efficient and effective regulatory environment.

Relatedly, we encourage the Bureau to regularly conduct reviews of its regulations in the interest of streamlining and eliminating outdated or superfluous requirements, increasing the efficiency of rules, or to provide exemptions where appropriate. However, it is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce complexity—always comes with a cost. For most Bureau rulemakings, the Dodd-Frank Act and the Regulatory Flexibility Act provide specified review processes intended to assist in identifying necessary or appropriate regulatory changes after the rule has been “in the field” for a reasonable time. Therefore, the Bureau should reserve the adoption of substantial changes to rules or policies for cases where there are compelling data-based reasons for doing so or an imminent need that addresses a specified consumer impact.

- Consult with NCUA during the policymaking process and avoid implementing duplicative or contradictory policies

Throughout their history, credit unions have been supervised by several different Federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when policy decisions affecting them are made by a regulatory agency that has significant familiarity with the characteristics that differentiate them from other financial services providers. The National Credit Union Administration (NCUA or agency), due to its half-century of experience regulating credit unions, has a special understanding of the credit union model as well as the environmental and operational challenges credit unions face daily. For that reason, the CFPB should work more closely with the agency throughout the policymaking process and avoid implementing policies that conflict with or are duplicative of those issued by the agency, especially regarding examinations.

- Provide certainty to regulated entities by adopting clear “rules of the road” and prioritizing internal consistency

Since the passage of the Dodd-Frank Act, there has been a massive increase in new consumer financial services regulations. This environment is particularly burdensome for credit unions which, unlike big banks, do not have scores of legal experts in-house to assist with compliance matters. Given the heightened nature of the regulatory landscape, it is important that the Bureau provide certainty to regulated entities through the adoption of clear “rules of the road,” internal consistency from the Director's office down to the field examiners, and robust guidance and implementation support.

In that spirit, we encourage the Bureau to provide helpful compliance resources, especially interactive webinars on final rules and Small Entity Compliance Guides, that help stakeholders understand regulatory expectations. We also encourage the Bureau to be proactive and continue providing compliance resources after final action as questions in need of clarification are identified. For example, the Bureau's recent implementation of an Advisory Opinion program is a positive development and should be maintained.

Regarding clarity, we oppose the Bureau adopting a “regulation by enforcement” approach to policymaking. We believe if the Bureau wants to make actionable policy, then it should propose clear regulations pursuant to the Administrative Procedure Act (APA) process instead of using its enforcement authority against financial institutions expecting the subsequent consent order to serve as a means for others to determine what practices are in violation of the law. We also caution against an unproductive and inflammatory “regulation by press release” approach to governance characterized by clearly politicized press releases intended to serve as a bully pulpit. The Bureau's recent reliance on blog posts, guidance, and even amicus brief filings to issue proclamations regarding the application of consumer financial protection laws is inappropriate and denies stakeholders the opportunity to participate in the statutorily mandated notice and comment process.

- Conduct thorough research prior to the adoption of a new rule or policy and base policy decisions on relevant data

The Bureau prides itself on being a modern, data-driven regulator. Former Director Cordray often referred to the data underlying consumer complaints as the Bureau's "compass," playing a key role in identifying and prioritizing the Bureau's actions, including in the realm of rulemakings. However, data for data's sake is insufficient, and it is critical that the Bureau's policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it has been common for a CFPB rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. The Bureau has also refused, in certain instances, to publicly share the data upon which it relies to justify a rulemaking—in direct contravention of its obligations under the APA. We challenge the CFPB to set a new standard for evidence-based rulemaking decisions and processes.

It is critical that the Bureau base its decisions on data specific to the entities it intends to regulate through an action. For example, relying on bank data to justify a rulemaking that also covers credit unions without evaluating credit union-specific data is misguided. Almost equally critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally identifiable information—the Bureau relies on as a foundation for its rulemakings.

- Ensure continued access to credit from reputable providers

Credit unions often provide the safest and most affordable loan options for consumers in need of credit. When developing rulemakings overseeing lending, the Bureau should carefully evaluate and consider the impact a policy decision may have on the availability of credit for consumers, especially when the action is likely to impact the cost of credit. At Afena, we understand the nuances of how our members use our affordable credit cards and we educate them on the potential fees and costs associated with this service. Over the last several years, we have consistently operated our credit card program near the break-even point or at a net loss to the credit union because we understand the importance of these options for families seeking affordable credit to cover an unintended cost that may arise. For example, we have called for the Bureau's rule governing short-term, small dollar lending to be meaningfully tailored to address predatory lending while not inhibiting credit unions from offering responsible credit products to members in need. It is important that the CFPB strikes an appropriate balance between its consumer protection mission and the availability of products and services. This balance is critical whether the product is a mortgage, credit card, or emergency loan. Many consumers rely on access to credit to manage their everyday finances, and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

- Encourage and support innovation in the consumer financial services marketplace

Innovation through technology and other creative solutions has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. However, the Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to another business model. Ultimately, credit unions must be given equal access to innovation policies and programs.

Conclusion

My lived experiences have underscored the importance of access to quality education and socioeconomic opportunities. They have fueled my commitment to advocating for marginalized communities, addressing systemic inequities, and doing whatever I can to level the playing field. Through mentorship, community outreach, and advocacy efforts, I strive to empower individuals to overcome barriers that prevent them from achieving financial well-being.

Credit unions across the country, including Afena, derive their value in their genuine commitment to serving their communities. Every decision we make is guided by our dedication to our members and the belief that they can achieve a brighter financial future if offered the proper tools, guidance, and most importantly respect. While my career leading financial institutions continues to reach heights beyond my wildest dreams, nothing brings me greater joy than hearing a member of my credit union express gratitude: "Thank you for empowering me to become a better financial

manager. You were there for me when everyone else said no.” While we may not be able to assist everyone, making a positive impact in the lives of those we serve is what truly matters.

It is crucial that stories like mine and the members of Afena are told in the halls of Congress and directly with the regulatory agencies that ensure safety, soundness, and fairness within the diverse financial services ecosystem. Unfortunately, over-regulation and attacks on products that provide necessary income to financial institutions, such as mischaracterizing avoidable and clearly disclosed fees as “junk fees, are making it harder for small institutions like mine to survive. It is not one single action that ultimately overburdens small institutions, but rather it is the tidal wave of regulations and restrictions that are ultimately crushing us. Finally, in addition to using your oversight authority to help small institutions, I would also encourage you to act on two small measures pending before the Committee that will help turn the tide and provide relief—S. 2674, the CDFI Fund Transparency Act, which would ensure an annual hearing on CDFI issues for institutions like mine, and S. 610, the Credit Union Board Modernization Act, which would reduce the number of required board meetings for well-run credit unions like mine. Both measures enjoy bipartisan and bicameral support.

Thank you for the opportunity to discuss these issues with the Committee today and I would welcome any questions you may have.

PREPARED STATEMENT OF SANTIAGO SUEIRO
 SENIOR POLICY ANALYST, UNIDOSUS
 MAY 9, 2024

Good morning and thank you for the invitation. My name is Santiago Sueiro, Senior Policy Analyst at UnidosUS, formerly the National Council of La Raza—the nation’s largest Hispanic¹ civil rights and advocacy organization.

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

UnidosUS publishes reports, provides testimony, and advocates on policies that protect consumers, make financial services more inclusive, and improve the financial well-being of working-class people and the Latino community. For example, we supported \$350 million in funding for the Community Development Financial Institutions Fund (CDFI Fund) in the latest federal budget, alongside policies to protect consumers in the financial sector, improve pathways to becoming fully banked or build credit, and lower barriers based on language differences to the financial mainstream.

Earlier this year, we testified before the House’s Financial Services Subcommittee on Financial Institutions and Monetary Policy in a hearing focused on financial regulations. Our research and analysis include publications such as *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities (2014)*; *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color (2019)*; and *Latinos Banking and Credit Survey: Arizona, California, Texas (2022)*.

We are grateful for this opportunity to testify before the Senate’s Committee on Banking, Housing, and Urban Affairs on topics related to fees in financial services, the impact on consumers, and the Consumer Financial Protection Bureau’s efforts to address these fees.

Working-class people, people of color, and Latinos find themselves on a positive economic trajectory, but many metrics paint a mixed picture for households. It is critical that Congress seek to fully understand the economic costs of maintaining an inequitable financial system in this uncertain moment. Congress and financial institutions can make practical progress towards a more equitable and inclusive financial system by following these three principles:

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

- Policymakers should respect recent efforts by financial regulators to create more transparency, and improve financial inclusion and affordability in the marketplace while supporting innovations that better meet the needs of working-class people.
- Financial institutions should reimagine the relationship between themselves and consumers to promote customer loyalty and reduce costs.
- Democratic structures, which provide a more meaningful role for working-class communities in banking policy decisions, can improve outcomes for everyone.

Below, we first present an overall picture of the gaps and bright spots in consumers' financial lives, including the gains and continuing challenges with the financial system such as those with credit card late fees and overdraft fees. Next, we highlight the three overarching principles above, explaining how applying them could consolidate gains made over the past few years and drive progress towards a more fair, affordable, and inclusive financial system.

Working-class people, people of color, and Latinos experienced some economic gains over the past few years, but challenges and disparities persist.

The past few years have seen economic gains in higher employment levels and wages, lower inflation, and increasing wealth. The overall unemployment rate is at a near historic low of 3.9%, with slightly higher rates for Black (5.6%) and Latino workers (4.8%).¹ Workers in the bottom wage quartile saw their annual wages increase by more than 4% per year since 2020 and overall wages increased as much as 6% in 2023 alone.²

At the same time, inflation is decreasing to near pre-pandemic levels, allowing consumers, including Latinos, to improve their purchasing power. As of April 2024, inflation was at 3.5%—down from a high of 9% in 2022—and nearing the Federal Reserve's 2% target.³ Real wages (wages after adjusting for inflation) increased for over 12 consecutive months and lower-income segments are experiencing the fastest growth. Though many households are still struggling, real wages increased by more than 1%⁴ since January 2023, and that increase was more than 3% for low-income workers.⁵

Lower-wealth groups also made gains in their net worth over the past few years. Latino wealth grew by 38% to \$61,000 between 2019 and 2022 and Black wealth grew by 66% to \$45,000 during that same period.⁶ However, the economic and racial wealth divide remains a concern, with White families' median wealth at \$287,000. Notably, the top 10% of households owned \$6.5 million in assets, while the bottom 50% of households averaged only \$50,000 in wealth.⁷

Despite gains in wealth, working-class people, people of color, and Latinos also are experiencing significant economic difficulties. For example, the poverty rate remains higher than was the pre-pandemic rate of 10.5%—at 11.5%, it represents 38 million people. The poverty rate for Black people reached a historic low of 17.1% in 2022, but among Latinos it remains higher than the pre-pandemic period, when it was 15.7%, and still hovers at 16.9%.⁸

The high cost of housing is also a major cause for concern. Last year, the overall cost of housing increased by 4.6%.⁹ and new findings show that 42 million households are cost-burdened (*i.e.*, they spend more than 30% of their income on housing), which is the highest rate recorded since 2015.¹⁰ More than 70% of households earning less than \$30,000 are cost-burdened, and roughly 40% of Black and Latino households are so.¹¹ Comparatively, just 10% of households making more than \$75,000 are cost-burdened.¹² Skyrocketing housing costs have also pushed more people into homelessness, growing to a record high of 650,000 last year. Of this population, some 28% are Latino, and 37% are Black.¹³

Total debt is also increasing to concerning levels, putting financial pressure on working-class households. Last year, total household debt reached a new high of \$17.29 trillion. Credit card debt is a major driver of the increase, rising by \$143 billion last year to the highest level on record (more than \$1 trillion).¹⁴ Working-class consumers and people of color have less access to credit, but those who do have a loan are more likely to carry debt than are White and wealthier consumers, and their debt burdens increase at a faster rate.¹⁵

These financial challenges contribute to how families are feeling about their economic situation. Last fall, we conducted a national poll of 3,000 Latino voters, in which we asked them to identify the most important issues elected officials should address. Inflation and the rising cost of living was the top concern that respondents listed, and the high cost of basic living expenses was a major factor in this concern.

The second highest concern was related to jobs and the economy, with low wages as a driver.¹⁶ Last year's Survey of Household Economics and Decisionmaking (SHED) from the Federal Reserve dramatically illustrates how working-class people are feeling, for Latinos in the survey, the number of people who say they are doing well financially decreased by 7% in comparison to the prior year.¹⁷

While there are a few bright areas in which economic progress is being made, lower-income people and communities of color continue to struggle. And even these gains could be short-lived if we fail to learn the policy lessons about what worked to lift families and children out of enduring poverty. With the expiration of the pandemic-era supports for households (including the expanded Child Tax Credit), backsliding could mean that many will fall into economic distress or even deeper distress. That is why, in addition to immediately enacting an expanded Child Tax Credit, policymakers should support common-sense consumer protections to ensure our financial institutions provide everyone with the tools they need to thrive.

Economic gains paved the way for budding improvements in financial inclusion and equity in banking, but significant disparities persist.

Over the past few years, the financial system made important advancements to reduce costs and improve financial inclusion. A 2022 study by Bankrate found that overdraft fees had fallen to their lowest level in 13 years, and that the average amount charged fell 11%, to \$29.80.¹⁸

This drop comes after years of efforts by industry, consumer advocates, policymakers, federal agencies (including the Consumer Financial Protection Bureau and Federal Trade Commission), to understand the adverse consequences of high overdraft fees and ways to reduce them.¹⁹ The changes are paying dividends for customers: the CFPB recently reported that overall overdraft revenue decreased by nearly 50% in 2022 in comparison to 2019.²⁰

Since 2021, several financial institutions have lowered or eliminated overdraft fees:

- Financial technology companies, such as Chime and Ally Bank, eliminated overdraft fees in 2021.
- Large banks reduced their overdraft fees. For example, Bank of America lowered fees to \$10,²¹ Huntington National Bank and Manufacturers and Traders Trust Company lowered fees to \$15 per overdraft, and Citi eliminated overdraft fees altogether.²²

We also made progress in reducing the unbanked population over the past few years. The latest survey of underbanked and unbanked people by the Federal Deposit Insurance Corporation (FDIC) found the unbanked rate had fallen to a near-historic low of 4.5%. The FDIC attributes this progress to COVID-era government benefits and programs that provided essential funds for households and families. These programs included the expanded CTC, COVID stimulus payments, and enhanced unemployment insurance, which appear to have helped unbanked consumers better afford the cost of opening and maintaining an account.²³

Further, a small but increasing percentage of companies now charge no late fees or offer products with increased flexibility for late payments. Most smaller banks and credit unions currently charge a maximum credit card late fee of \$25 or less, however almost all of the largest credit card issuers charge higher late fees.²⁴

Finally, many financial institutions are making progress in providing inclusive and low-cost small dollar loans to consumers. The table below lists examples of small dollar loan products that financial institutions currently offer. These products are low-cost, viable alternatives to overdraft or the higher-cost loans available to working-class consumers.²⁵

Table: Examples of Small Dollar Loan Offerings²⁶

Product name	Issuing bank	Loan size range	Speed of access to funds	Term to repay	Payment structure	Pricing
Balance Assist	Bank of America	\$100–\$500	Within minutes	3 months	Equal monthly payments	\$5
Standby Cash	Huntington Bank	\$100–\$500	Within minutes	3 months	Equal monthly payments	Free if autopay; 12% APR if not

Protection Line of Credit	Regions	\$50–\$500	Within minutes	No fixed term	Minimum 10% of balance (min. \$5)	12% APR
Cash Reserve	Truist	\$5–\$750	Within minutes	4 months	Equal monthly payments	18% APR
Simple Loan	U.S. Bank	\$100–\$1,000	Within minutes	3 months	Equal monthly payments	\$6 fee per \$100 borrowed
Flex Loan	Wells Fargo	\$250–\$500	Within minutes	4 months	Equal monthly payments	\$250 for \$12 flat fee or \$500 for \$20 flat fee

Many financial institutions are moving into these products, presumably in recognition that some consumers who overdraft lack access to affordable credit and thus rely on overdraft to help make ends meet or smooth income flows over time. These types of small dollar loans represent an encouraging shift in thinking by financial institutions that are increasingly seeing a clear business case for organizing around the economic circumstances of working-class consumers and creating programs with lower costs and more flexibility.

Despite such positive developments, working-class people, people of color, and Latinos too often continue to experience a lack of access of financial services and pay higher costs and fees than others when they do use them. The two largest types of fees, by volume, are overdraft fees and credit card late fees.

The data are clear that working-class people and people of color are disproportionately impacted by overdraft fees. The Financial Health Network concluded that lower- to moderate-income households are nearly twice as likely to overdraft as higher income households.²⁷ The report finds that Black and Latino households are also about twice as likely to be charged overdraft fees than are White households. For bank account product fees overall, Latinos pay, on average, \$14 per month for ATM, overdraft, and routine service charges on their checking accounts, while Black account holders pay \$12 a month. In contrast, Whites pay an average of \$5 per month.²⁸

Working-class people and Latinos also are disproportionately impacted by credit card late fees. A 2022 study by the Boston Federal Reserve found that those making \$50,000 or less a year are 5% more likely to pay a late fee than those making more than \$100,000 annually.²⁹ Additionally, a 2022 CFPB report found that consumers living in the poorest neighborhoods in the U.S. paid

twice as many late fees as those living in the wealthiest areas.³⁰ An UnidosUS study from 2022 underscored this finding, as 19% of Latinos paid a credit card late fee in the prior year.³¹

Higher fees and costs also impact Latino consumers in the car buying process.³² For example, Blacks and Latinos are sold multiple “add-ons” that generally do not increase the value of the vehicle almost twice as often as are White consumers.³³ Furthermore, an FTC study from 2021 found reports of auto dealers making enticing claims to Limited English Proficiency (LEP) consumers in Spanish that later concealed additional material terms, such as fees, presenting them only in English.³⁴

The effects on consumers of excessive fees can be serious. Studies show that individuals who overdraft frequently use high-cost loans from payday lenders and loan sharks to pay overdraft fees, trapping them in cycles of debt.³⁵ Consumers who pay the most in bank fees also face high rates of involuntary account closures.³⁶ Such closures can push consumers out of the financial mainstream and reinforce banking inequities. The fees for deposit accounts are frequently cited in studies as one of the leading reasons for the unbanked to lack an account.

According to the Federal Deposit Insurance Corporation (FDIC), high costs and fees make up three of the top five reasons that unbanked people cannot access a bank account.³⁷ A 2022 survey we conducted of 1200 Latinos similarly found that such costs and fees are two of the three leading reasons that Latinos cannot access a bank account.³⁸ The unbanked are disproportionately lower-income and Latino: more than 9% of those making less than \$30,000 are unbanked, compared to 0.6% of those making more than \$75,000, and 9% of Latinos are unbanked, compared to 2% of White consumers.³⁹ The fees also have implications for access to credit for unbanked and marginalized populations. FDIC’s survey found that only 9% of the unbanked have a credit card or personal loan, compared to 72% of the total population.⁴⁰ Moreover, just 49% of Black households and 60% of Latino households have a credit card, compared to 78% of White households. Our 2022 survey found that only 56% of Latinos had a credit card and only 37% of those making less than \$29,000 a year had a credit card, compared to 68% of those making more than \$50,000 a year.⁴¹

Finally, racial and ethnic minorities continue to face undue barriers to accessing credit compared to Whites with precisely the same financial data. In 2022, the FDIC found meaningful differences in loan denial rates between groups of different races and ethnicities.⁴² Even after controlling for credit scores, income, debt, and loan value, the study showed that Blacks and Latinos are considerably more likely than are Whites to be denied a loan and the disparity grows for those with lower credit scores. Notably, immigrants and those who speak English as a second language face additional barriers, as many financial institutions fail to accept Individual Taxpayer Identification Numbers (ITINs), alternative forms of identification, or to provide adequate or comprehensive language access services.

The CFPB’s credit card late fee rule will improve the affordability of credit. Credit card late fees currently total more than \$14 billion per year with the average late fee amounting to \$32. The

CFPB's rule would lower late fees to \$8, and is projected to save consumers more than \$10 billion a year, or \$220 a year for the average credit card holder.⁴³

The rule will disproportionately help working-class consumers, people of color, and Latinos. However, many are concerned that the rule may constrict access to credit for consumers and lead to more late payments because higher late fees act as a deterrent for late payments. We explore the following issues concerning the credit card late fees rule and how it will ultimately benefit consumers:

- Late fees are common among working class consumers, people of color and Latinos.
- Late fees have a detrimental effect on financial health and access to credit.
- Late fees do not effectively deter late payments and undermine the relationship with borrowers.

First, affordable credit is an important ingredient towards building the financial well-being of consumers. For low-income people and Latinos, a credit card can serve as an important tool to withstand dips in income or unexpected expenses, purchase assets, or build credit scores. In the wrong circumstances, however, poorly managed or expensive forms of credit can cause lasting adverse effects for Latino consumers. The prevalence and scale of late fees serves as an example of how credit can contribute to adverse impacts on the financial well-being of consumers.

Working-class consumers, people of color, and Latinos pay disproportionately high late fees. Those making less than \$50,000 or less a year are 5% more likely to pay a late fee than wealthier consumers.⁴⁴ And, consumers in the poorest neighborhoods pay twice as much on average in total late fees than those in the richest areas.⁴⁵ Consumers in majority-Black areas pay more in late fees than majority-White areas.⁴⁶ Recent data shows that 11% of Black people with a credit card paid a late fee in the last 12 months, while 5.3% of Latinos paid a late fee and 4.4% of Whites paid a late fee.⁴⁷ Alarming, a forthcoming study to be released by UnidosUS in May 2024 found that that 25% of Latinos paid a late fee.

Further evidence suggests that a small group of people are paying a disproportionately high amount of late fees. The CFPB found that, "consumers with super-prime scores hold 59% of card accounts but pay only 21% of late fee volumes; by contrast, consumers with deep subprime scores hold about 6% of card accounts but generate 24% of late fee volumes."⁴⁸ People with deep subprime and subprime scores are disproportionately people of color: data show that 54% of Blacks and 41% of Latinos report having no credit or a poor to fair credit score, compared to 37% of Whites.⁴⁹

Second, late fees are detrimental to financial well-being and access to credit. The accumulation and high costs of late fees has negative consequences on the financial well-being of consumers and impedes access to credit. Late fees make it harder to get an account out of delinquency and increase the chance of losing an account. Delinquency rates are rising, with the Federal Reserve Bank of New York finding that credit card delinquencies rose more than 2% in 2023 with 8.5% of all credit card debt balance in delinquency.⁵⁰ With more low-income people and people of

color now carrying balances and delinquency rates rising, these groups are now more at risk of falling behind on payments and losing access to an important source of credit. High late fees may also prevent people from obtaining credit. For example, the Morning Consult found in 2019 that 41% of people who do not have a credit card cited high fees as a reason for not obtaining credit.⁵¹

The impact of reducing late fees on the availability of credit can be better understood by studying implementation of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act). The CARD Act banned credit card companies from charging excessive penalty fees and established clearer disclosures and consumer protections including capping late fees to \$25 for first late payment, and \$35 for subsequent late payments.

A 2013 study by economists at the National Bureau of Economic Research found “no evidence of an offsetting increase in interest charges or a reduction in volume of credit” in the years after the CARD Act was implemented. Instead, the study discovered a reduction in late fees, especially for those with lower credit scores, leading to a reduction in overall costs of 2% for all consumers and a bigger reduction of 6% for consumers with FICO scores below 660.⁵² The study also found that the fee reductions mandated by the CARD Act saved US consumers \$12.6 billion a year since 2010.⁵³

Third, late fees are not an effective deterrent for late payments. The evidence demonstrates that while late fees may have some deterrent impact for late payments by some consumers, the same logic does not apply to lower-income consumers and those experiencing a financial shock. A 2017 analysis of consumer behavior by economists at Washington State University found that if consumers face a financial shock, late payments cannot be deterred even when the penalty is high. The study data showed that 42% of consumers missed a bill payment because they lacked the funds to make a payment.⁵⁴

The study did find evidence that those with the means to make payments but are forgetful or busy could be deterred to miss payments by a fee. However, those who lack the means to pay will not be deterred from a late payment by a late fee, no matter the size of that fee. The study also found evidence that credit card companies will charge higher penalties to consumers who they know are likely to experience a financial shock if the legal limit permits a higher penalty.⁵⁵

Lowering the late fee to \$8 is not the only deterrent to a late payment. For example, missing a payment negatively impacts a consumer’s credit score, creditors can also lower a consumer’s credit limit, reduce the cardholder’s earning or redemption of rewards, and/or impose penalty rates.⁵⁶ Consumers are aware of the various negative consequences of missed payments, including lower credit scores. Lowering the late fee to \$8, as in the CFPB rule, will make it easier for those who experience a financial shock and are struggling financially to find a way to make their future payments because their debt burden will be more manageable.

Policymakers should follow three guideposts towards a more equitable banking system.

Both new regulations and long-standing consumer protections are important to ensure a more inclusive financial system. As we explain previously, the high costs of deposit accounts and credit can limit participation in the financial system and financial services. Yet incentives to achieve financial inclusion should also spur innovation to meet consumer needs.

Financial institutions have an opportunity to build trust with communities of color and lower-income households by rethinking their relationship with consumers, and prioritizing longer-term investments and steps that build customer loyalty. In this way they can find solutions that work both for their business model and consumers, including those who cycle unproductively in and out of the banking system due to affordability concerns. Finally, a meaningful role for communities both within financial institutions and as partners can build trusting relationships, improve products and services, and help to create a more equitable banking system.

First, policymakers should support both consumer protections and market-driven innovations and approaches.

Regulators such as the CFPB play a critical role in securing a fairer marketplace for all consumers. When the CFPB was established following the 2008 financial crisis, millions of people had lost their homes. People of color were disproportionately impacted: Latino households lost 66% and Black households lost 53% of their wealth between 2005 and 2009, compared to White households, which lost 16% of their wealth.⁵⁷ Congress established the CFPB as a reaction to the financial crisis, making it responsible for coordinating and creating consumer protections so that everyone, including working-class and people of color, can benefit from a fairly functioning marketplace for financial services.

The CFPB is charged with enforcing laws that address discrimination and unfair treatment related to financial products, including the Equal Credit Opportunity Act and Truth in Lending Act. Through its rulemaking, supervision, and enforcement authorities, the Bureau works to stop harmful financial practices that contribute to the economic and racial inequality, including bringing more than 300 enforcement actions resulting in \$3.7 billion in penalties for fair lending law violations alone. While these are steps towards creating a more inclusive and equitable banking system, financial institutions should continue to innovate to ensure that they are reaching marginalized populations and providing innovative products to meet their real-time needs.

One example of this kind of innovation is simple and often overlooked. Bank On certified accounts are an example of a viable market solution to address inclusion and equity while providing financial institutions with a tool to meet customer needs. The Cities for Financial Empowerment Fund (CFE) created and established Bank On account standards to encourage financial institutions to offer products with equitable account features such as no minimum balance requirement, no overdraft fees, and no or low fees of any kind.⁵⁸ These accounts are offered by hundreds of financial institutions and at more than 45,000 bank branches across the country.⁵⁹

Despite the availability of Bank On products, evidence suggests that increases in income during the pandemic are the primary drivers for unbanked consumers to be able to acquire bank accounts. And there are signs that the unbanked rate is increasing as pandemic-era programs expire. While financial institutions have displayed a willingness to provide Bank On products to consumers, they are often insufficiently marketed, and more can be done to connect these products with under- and un-banked households.

Policymakers should support financial institutions to be creative about how to reach the unbanked. Agencies can incentivize these efforts through capital investments, such as the Community Development Financial Institution Fund (CDFI fund), or as an evaluation during mergers and recertifications as occurs under the Community Reinvestment Act (CRA).

As this suggests, policymakers should explore new and creative ways to incentivize financial institutions to reach marginalized populations and develop solutions, including financial products that working-class and Latino communities need.

Second, financial institutions should reimagine the relationship between banks and consumers to promote customer loyalty and reduce costs.

Rather than increasing fees, some financial institutions are instead offering tools that provide consumers with affordable and flexible credit terms in conjunction with lower fees. Safe and affordable small dollar loans, such as those described in the chart above, can help protect working-class consumers and Latinos from all manner of unforeseen expenses and fluctuations in income. Such offerings also produce long-term benefits for both financial institutions and consumers by building better relationships over time.

Lowering fees and offering products that meet the financial needs of lower-income people and marginalized consumers can build trust and loyalty among those consumers. If consumers see that their financial institution is willing to be flexible and meet them where they are, they will in turn be more likely to remain loyal to the financial institution and will be likely to use more financial products as they improve stability and grow economically.

Recent research by Pew Trusts shows that consumers look at financial institutions more favorably if they reduce or eliminate overdraft fees. They also find that consumers would look at financial institutions more positively if they offered affordable small-dollar loans to people with low credit scores.⁶⁰ Lower-income people, immigrants with ITINs, and LEP consumers also need access to lower-cost and high-quality financial products to help build their financial well-being and are a largely untapped market with tremendous promise.

Further, smaller financial institutions and those with greater difficulty accessing capital, such as Community Development Financial Institutions (CDFIs), low-income credit unions, and Minority Depository Institutions (MDI), should receive additional supports to be able to adopt these best practices. While these institutions already subscribe to this approach, they could reach more consumers through programs like the CDFI Fund, which provides capital to mission driven

financial institutions, or deeper public or private investments. From a consumer perspective, it would be ideal to ensure that there are meaningful opportunities across a range of financial institutions, including banks and credit unions that are already connected with and support lower-income and marginalized consumers.

Third, democratic structures can make our banking system more equitable.

Public policy can also help to make the financial system more equitable by ensuring that lower-income people have a meaningful voice in institutional decision making. This goal can be advanced both by growing community-owned institutions and by expanding democratic structures to elevate communities in financial decisions that affect them.

Credit unions are the most prevalent community-owned financial institution. They are structured as member-governed nonprofit cooperatives that enable community members to vote for and sit on the institution's board of directors. They also generally offer reasonably priced financial products and provide inclusive products and services. Some credit unions, especially those that are also CDFIs and/or MDIs, serve the needs of undocumented immigrants by accepting ITINs, offer services in different languages, and install branches in communities with few banking services.

These institutions, however, have far fewer resources than traditional banks. There are currently 4,645 credit unions in the United States with combined total assets of \$2.23 trillion,⁶¹ 1,480 CDFIs have over \$452 billion dollars in assets.⁶² And MDIs, which are owned by people of color, total just under 150 with \$320 billion in assets.⁶³ Comparatively, the banking sector has combined assets of nearly \$23 trillion.⁶⁴

Regulations that give community members more influence in banks' decision-making processes can also improve the banking system. For example, federal regulators could require that banks meet with community advisory committees to allow lower-income communities to voice their needs directly to decision-makers within financial institutions. A community advisory committee could be empowered to negotiate institutional commitments to improve banking practices if a community is overburdened with overdraft fees or is failing to receive a fair share of lending and investment.

Furthermore, regulators and Congress can also give community-based groups the ability to grade a financial institution's performance in a Community Reinvestment Act (CRA) examination. Bank regulators recently updated the CRA, making significant changes to certain aspects of the program but disappointingly did little to improve the ability for communities to provide feedback during evaluations.

Some financial institutions have called for a "race to the top" business strategy as the path forward for the banking sector. Investing in low-income people by providing affordable and high-quality products will allow banks and communities to grow together. If we create a banking system built on trust and loyalty, and one that invests in the longer-term potential of

working-class people, people of color, and Latinos, we will be one step closer to creating a fair, inclusive, and thriving economy.

We are grateful that the Senate Committee on Banking, Housing, and Urban Affairs is taking up this issue, and look forward to your questions.

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RESPONSES TO WRITTEN QUESTIONS OF SENATOR FETTERMAN FROM ADAM RUST

June 14, 2024

Questions for Mr. Adam Rust, Director of Financial Services, Consumer Federation of America,¹ from Senator John Fetterman:

1. *Mr. Rust: I have always been a champion of giving people a second chance. Charging fees on people's gate money when they leave prison—that isn't giving them a second chance, it's kicking them when they're down. Can you tell me about the predatory fees people in jails and prisons and their families have to pay? What can Congress do to fix this issue?*

Thank you for the chance to address predatory fees that harm justice-involved people and their families.

Across the United States, incarcerated individuals and their loved ones are held captive to the agreements that correctional institutions make with private companies to provide basic, essential goods and services. Not surprisingly, a system without consumer choice has permitted junk fees attached to these products to flourish. In this response, I will show how the criminal justice system applies junk fees before, during, and after imprisonment.

These fees impose burdens on a disproportionately lower-income population and of color. Incarcerated people and their families are disproportionately poor² and people of color.³ On average, people earned \$19,185 in 2014 before their incarceration (\$25,410 adjusted for inflation to 2024), which is 41% less than their peers who were not incarcerated.⁴ While incarcerated, people have virtually no ability to earn

¹ The Consumer Federation of America (CFA) is an association of non-profit consumer organizations established in 1968 to advance the consumer interest through research, advocacy, and education. Today, more than 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors. As an advocacy organization, CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

² The median income among people *entering* prison is 41 percent less than the national average, and people have virtually no ability to earn meaningful wages while they are incarcerated. Bernadette Rabuy & Daniel Kopf, Prison Policy Initiative, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* (2015), <https://www.prisonpolicy.org/reports/income.html> ("We found that, in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than nonincarcerated people of similar ages."); Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, Prison Policy Initiative (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> (showing average hourly wages of 14¢ to 63¢ for typical prison jobs).

People leaving incarceration are even worse off financially. See, e.g., Terry-Ann Craigie et al., Brennan Ctr. for Just., Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality, 6 (2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal/ref=honey-suckledmag.com> (finding that "[i]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise," that "[t]hese losses are borne disproportionately by people already living in poverty," and that "they help perpetuate it").

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Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

meaningful wages.⁵ And people leaving incarceration are even worse off financially.⁶ The level of incarceration in our country is staggering. At the end of 2021, approximately 1.2 million people were incarcerated in a state or federal prison, and another 647,000 were in a local jail.⁷ During the twelve months ending June 30, 2023, 7.6 million people were admitted to a local jail.⁸ A 2023 Bureau of Justice Statistics report found that seventy percent of those in jail were unconvicted and awaiting trial or court action.⁹ Almost five million people have been incarcerated in a state or federal prison, and approximately 113 million have an immediate family member who has been to prison or jail.¹⁰

Policymakers should also consider how a system of fines and fees contradicts the purpose of a system identified by the term “corrections.” When these fees compromise the financial stability of justice-involved populations, they may contribute to recidivism and encourage forces contrary to public rehabilitation goals.

I. Prepaid debit cards are used by correctional facilities to return a person’s money and to provide gate money when they exit incarceration. The high fees can drain account balances.

The prepaid debit “release cards” given to people upon release from incarceration are loaded with junk fees. Because of exclusive contracts negotiated between card companies and correctional institutions, people leaving incarceration often receive their “gate money” and outstanding commissary balances—the incarcerated person’s own money—on prepaid “release” cards upon exiting their correctional institutions. These cards often have high fees, including fees for withdrawing cash, making a purchase, using an ATM, or even checking a balance. Many also apply inactivity fees.

The Consumer Financial Protection Bureau (CFPB) has sought to address junk fees on release cards. In 2021, the CFPB acted against JPay to prevent these practices. As a result of the CFPB’s enforcement order, the company will not be able to charge fees to release card accounts for five years, except by applying an inactivity fee after 90 days. Additionally, the CFPB ordered JPay to provide \$4 million in compensation to harmed consumers and to pay a \$2 million civil penalty.¹¹

⁵ Wendy Sawyer, How Much Do Incarcerated People Earn in Each State?, Prison Policy Initiative (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> (showing average hourly wages of 14¢ to 63¢ for typical prison jobs).

⁶ See, e.g., Terry-Ann Craigie et al., Brennan Ctr. for Just., Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality, 6 (2020), <https://www.brennancenter.org/ourwork/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal-ref-honeysuckledmag.com> (finding that “[o]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise,” that “[t]hese losses are borne disproportionately by people already living in poverty,” and that “they help perpetuate it”).

⁷ Vera Institute. “Incarceration Statistics.” Accessed June 13, 2024. <https://www.vera.org/ending-mass-incarceration/causes-of-mass-incarceration/incarceration-statistics>.

⁸ Zeng, Zhen. “Jails Report Series: Preliminary Data Release.” Bureau of Justice Statistics, November 2023. <https://bjs.ojp.gov/library/publications/jails-report-series-preliminary-data-release-2023>.

⁹ Zeng, Zhen. “Preliminary Data Release” Bureau of Justice Statistics. Accessed June 13, 2024. <https://bjs.ojp.gov/preliminary-data-release-jails-2023>.

¹⁰ Prison Policy Initiative. “Mass Incarceration Directly Impacts Millions of People.” Accessed June 13, 2024. <https://www.prisonpolicy.org/graphs/directlyimpacted2022.html>.

¹¹ Consumer Financial Protection Bureau. “CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-Enter Society After Incarceration,” October 19, 2021. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

Nonetheless, fees are still a problem. The next table shows fees for several active release cards:

Card	State/Year	Maintenance	ATM w/d	ATM b/i	ATM decline	POS	Replacement
Rapid Fin'l by Axiom Bank	AL/2020	\$2.00 (weekly)	\$2.95	\$1.50	\$2.95	\$0	\$2.99
Elan US Bank	NE/2022	\$0	\$0/\$1.25	\$0/\$1.00	\$0	\$0	\$5.00
Way2Go by Comerica	ND/2019	\$0	\$0/\$1.25	\$0	\$0	\$0	\$0
Access Freedom, Axiom Bank	NV/2020	\$1.50 (weekly)	\$2.75	\$1.50	\$2.75	\$0	\$2.99
Prestige/NUMI by Central Bank of Kansas City	?/2020	\$2.50 (weekly)	\$2.95	\$1.00	\$1.00	\$0	Not given
JPay Progress by Metropolitan Commercial Bank	/2024	\$0	\$0	\$0	\$0	\$0	\$0

ATM b/i = balance inquiry, in-network/out-of-network. ATM w/d = withdrawal. POS = point-of-sale purchase. Source: CFPB Prepaid Products Agreements Database¹²

The CFPB has enforcement and rulemaking authority over release cards, and advocates have argued¹³ the CFPB should exercise supervisory authority over the largest providers of these services pursuant to the CFPB's proposed rule on “Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications.”¹⁴

A complaint filed in a 2021 class action lawsuit revealed the injustice of these fees. In 2019, the lead plaintiff received the remaining \$213.40 balance of his commissary account and \$200 in “gate money” upon release from Chuckawalla Valley State Prison in Riverside County, California. The prison required funds to be distributed on a JPay release card and did not provide the recipient with disclosures revealing the fee schedule. The person had not spent the money, but when he checked his balance a few months later, only \$4.87 remained.¹⁵

II. Fees are charged throughout an individual's journey through the justice system. This is true after an arrest through sentencing, during incarceration, and afterward during probation.

a. Junk fees are prevalent before a person enters a correctional facility. Fees are charged before incarceration—from arrest through sentencing.

Commercial bail fees.

¹² Consumer Financial Protection Bureau. “Prepaid Product Agreements Database.” Accessed May 24, 2024. <https://www.consumerfinance.gov/data-research/prepaid-accounts/search-agreements/>. See also Raher, Stephen. “Insufficient funds: How prison and jail ‘release cards’ perpetuate the cycle of poverty.” Prison Policy Initiative, May 3, 2022. <https://www.prisonpolicy.org/blog/2022/05/03/releasecards/> (analysis of fee disclosures that release-card companies had filed with the CFPB, including fee disclosures for all active prepaid cards that: (1) were marked with the product-type code “prison release,” or (2) were associated with known release-card issuers, marketers, or program managers).

¹³ National Consumer Law Center & Worth Rises, Comments submitted January 8, 2024, re: CFPB's Notice of Proposed Rulemaking, “Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197, <https://www.nclc.org/wp-content/uploads/2024/01/Larger-Market-Participants-Rule-Docket-No-CFPB-2023-0053-Comments-Concerning-Justice-Involved-Consumers.pdf>.

¹⁴ Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197 (proposed Nov. 17, 2023) (to be codified at 12 C.F.R. pt. 1090), <https://www.federalregister.gov/documents/2023/11/17/2023-24978/defining-larger-participants-of-a-market-for-general-use-digital-consumer-payment-applications>.

¹⁵ Prison Legal News. “HRDC Case Sues JPay Over Fee-Heavy ‘Release Card’ Debit Cards,” October 21, 2021. <https://www.prisonlegalnews.org/news/2021/oct/21/hrdc-case-sues-jpay-over-fee-heavy-release-card-debit-cards/>.

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

Commercial bail companies commonly levy fees for various (often ambiguous) expenses beyond the bond premium. The consumer has almost zero bargaining power when entering these fee-laden contracts. Contracts are negotiated at the bail agent’s office—and an accused person who does not sign the agreement under the proffered terms can be taken back to jail. Furthermore, many bail agents allow the consumer to pay for the bond premium in installments, often in return for charging financing fees and costs. The terms and cost of this extension of credit may be murky and devoid of the types of disclosures typically required in consumer contracts. In addition, financing costs may cause the premiums to exceed the jurisdiction’s rate cap.¹⁶ All of this occurs against a backdrop in which these companies have increasingly escaped any financial risk by carving out loopholes to place that burden on the backs of their customers and the taxpayers.¹⁷

Fees to have a court-appointed attorney.

Even the fundamental assumption that all defendants have a right to counsel, regardless of their ability to hire a private attorney, is challenged by the desire to charge fees. In *Gideon v. Wainwright*, the Supreme Court guaranteed the right of a defendant to an attorney, regardless of their ability to afford one, the Supreme Court has found that states can attempt to recoup the costs of providing one. As recently as 2022, forty states had policies to charge fees for indigent defense.¹⁸ A 2024 study of policies in Iowa found that poor people were charged for their legal aid even if they were acquitted or the cases against them were dropped. When those individuals cannot repay the charges, they are vulnerable to severe penalties. The report added that individuals indebted from their defense may have their wages, bank accounts, and tax refunds garnished. If on probation, they may be arrested.¹⁹

b. More fees are charged to incarcerated individuals and their loved ones during incarceration.

Fees are charged to send money electronically.

Across federal, state, and county correctional institutions, vendors charge high fees to consumers who send money electronically to incarcerated individuals. Costs to send funds are the norm. A 2021 survey found that only seven states process payments in-house. The rest use private third-party vendors.²⁰

Earlier, I outlined some of the costs JPay charged prior to the CFPB enforcement order against its release card. While the order has forced JPay to eliminate virtually all card fees, the company still charges high fees for many other services.

¹⁶ Brian Highsmith, Nat’l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 26 (2019), available at <https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf> (internal citations omitted).

¹⁷ Wendy Sawyer, *All Profit, No Risk: How the Bail Industry Exploits the Legal System*, Prison Policy Initiative (October 4, 2022), available at <https://www.prisonpolicy.org/reports/bail.html>.

¹⁸ Gill, Lauren, and Weihua Li. “Her ‘Free’ Court-Appointed Lawyer Cost Her Thousands of Dollars.” *The Marshall Project*, February 12, 2024. <https://www.themarshallproject.org/2024/02/12/miranda-rights-indigent-defense-iowa>.

¹⁹ *Ibid*

²⁰ Rahe, Stephen and Tiana Herring. “Show me the money: Tracking the companies that have a lock on sending funds to incarcerated people,” Prison Policy Initiative, Nov. 9, 2021. <https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/>. See also Nelson, Ariel, and Stephen Rahe. “Captive Consumers: How Government Agencies and Private Companies Trap and Profit Off Incarcerated People and Their Loved Ones.” *Inquest*, March 19, 2022. <https://inquest.org/captive-consumers/>.

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

For example, JPay has contracts with hundreds of prisons, charging high fees to send money. Exact amounts vary according to the contract negotiated by the money transmitter and the correctional institution. For example, it costs \$9.95 to send \$200 to an account at a federal prison.²¹ As the funds are sent by ACH, the cost to the provider is less than ten cents. In our view, it is unlikely the fees could be so high if it were not for the fact that a third party determines the prices paid by consumers. Moreover, political interests exist that support these arrangements. Often, these fees are used to meet some of the expenses paid by governments to manage prisons or cross-subsidize other public services. When fees are sent through a card network, a fee to cover the cost of interchange and other fees related to merchant processing may be reasonable, but not fees that are significantly greater.

Concerns about high fees are further reinforced by the fact that some correctional institutions offer money transmission services with identical vendors but at very different rates. This underscores the likelihood that contracts permit predatory profiteering by money-transfer companies; differing rates may also be a reflection of these companies paying commissions—sometimes called “kickbacks”—to correctional facilities.²² For example, a Georgia state prison charges 5 cents to send up to \$500,²³ but the same vendor working with the Louisiana Department of Corrections charges \$12.50 to send up to \$300 online.

Not all correctional systems rely on exclusive contracts; some provide more than one choice. Nonetheless, these are still not markets where new entrants can easily participate. The choice of several providers is better than one, but it may still present concerns over oligopolistic coordination. In addition, in some correctional facilities that offer multiple options for sending money, this does not mean there is true competition. For example, a prison system could contract with JPay to handle all money transfers, and JPay could subcontract with Western Union to handle in-person cash payments. In such a circumstance, it may seem that consumers can choose between JPay and Western Union, but in actuality, Western Union is acting as JPay’s agent, not its competitor.²⁴

Moreover, the few companies that dominate the market add to their market power by selling their services in bundles. A single contract may permit a provider to have exclusive arrangements to offer communication, financial services, education, entertainment, and other services.²⁵ This approach results in correctional institutions having little meaningful way to negotiate better prices or even compare bidders’ prices.

Again, because incarcerated individuals are disproportionately likely to come from low-wealth households, many payment orders are for relatively small amounts. Flat fees range from \$3.49 to

²¹ LLC, JPay, and JPay LLC Support@JPAY.com. “Available JPay Services Send Money Rates.” JPay LLC. Accessed May 5, 2024. <https://www.jpays.com>.

²² Raher and Herring, *supra* note 20.

²³ LLC, JPay, and JPay LLC Support@JPAY.com. “Available JPay Services Metro State Prison.” JPay LLC. Accessed May 22, 2024. <https://www.jpays.com>.

²⁴ Raher and Herring, *supra* note 20.

²⁵ Technologies, Aventiv, and Q2FzZXkgV2F0a2lucw==. “Securus Technologies Realigns Business Units, Diversifies Product Offerings Under New Corporate Parent: Aventiv Technologies.” *Aventiv Technologies* (blog), October 10, 2019. <https://www.aventiv.com/securus-technologies-realigns-business-units-diversifies-product-offerings-under-new-corporate-parent-aventiv-technologies/>.

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

\$6.95, while seemingly small fees can consume a large percentage of small-dollar transfers. One report estimates that fees capture one of every five dollars sent to an incarcerated person.²⁶

Costs of communication: Fees for phone calls, email, and video calls.

Incarcerated individuals pay dearly for the opportunity to communicate with friends and family. There is cruelty embedded in this system, as most jobs available to incarcerated individuals may pay less than one dollar per day.²⁷ The magnitude of fees burdens the loved ones of incarcerated individuals. One report estimated that one in three families of an incarcerated individual goes into debt to pay for phone calls and visits.²⁸

In some institutions, the fee to send a one-page email is roughly equivalent to the cost of a new postage stamp. A longer email could require a second “stamp.”²⁹ It is a perfect example of a fee whose justification is based on false logic. Some correctional institutions may contend that the prices of electronic messages are now close to the price of a stamp, but the comparison is not legitimate. The cost of mailing a letter is much greater than the cost of sending an email. In fact, the latter is virtually costless and remains costless even when an email has an attachment.

The vast majority of correctional systems also charge incarcerated people to communicate with their loved ones via phone or video calls, and often at exorbitant rates. As of late 2021, the average jail charged about \$3 for a 15-minute call, and some county jails charged as much as \$12.99 for a twenty-minute video call.³⁰

One positive development is that efforts by the Federal Communications Commission (FCC) to limit exorbitant junk phone call fees have succeeded. In 2014, the FCC capped the costs of interstate phone calls at 21 cents per minute. Even more promisingly, due to the passage of the Martha Wright-Reed Just and Reasonable Communications Act of 2022, the FCC now has the authority—and mandate—to also limit the exorbitant costs of *intrastate* phone calls for incarcerated people, as well the excessive costs of inter- and intrastate video calls for this population. Several jurisdictions have gone even further, requiring free communications to be made available to incarcerated people.

Nevertheless, much work remains. Most jurisdictions still do not provide free communication to their incarcerated residents. The FCC’s regulations following the Martha Wright-Reed Act will merely set a *cap* for phone and video calls—a cost that may still be unaffordable for many incarcerated people and their families. In addition, these regulations will not apply to electronic messaging at all.

²⁶ Nelson, Ariel, and Stephen Raher. “Captive Consumers: How Government Agencies and Private Companies Trap and Profit Off Incarcerated People and Their Loved Ones.” *Inquest*, March 19, 2022. <https://inquest.org/captive-consumers/>.

²⁷ Jallow, Ahmed. “Burden of High Prices behind Bars in NC.” *Carolina Public Press*, December 22, 2023. <http://carolinapublicpress.org/62619/burden-of-high-prices-behind-bars-in-nc/>.

²⁸ deVuceno-Powell, Saneta, et al. *supra* note 3.

²⁹ Law, Victoria. “How Companies Make Millions Charging Prisoners to Send An Email.” *Wired*, August 3, 2018. <https://www.wired.com/story/jpay-securus-prison-email-charging-millions/>.

³⁰ Wagner, Peter, and Wanda Bertram. “State of Phone Justice 2022: The problem, the progress, and what’s next.” *Prison Policy Initiative*, December 2022. https://www.prisonpolicy.org/phones/state_of_phone_justice_2022.html.

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

Communicating with friends and family benefits the health of incarcerated individuals, may decrease their odds of recidivism,³¹ and can strengthen important social and familial ties.³² These fees compromise important social priorities.

Fees to pay for the costs of imprisonment.

Many correctional systems coerce incarcerated individuals to pay for the costs of their imprisonment.³³ Room and board fees—also called “pay-to-stay” fees—are found in many of our country’s prisons and jails. They are typically charged at a per diem rate for the length of incarceration, commonly \$20 to \$80 per day. For example, in Michigan, any county can seek reimbursement of up to \$60 a day for expenses incurred in relation to a charge for which a person was sentenced to county jail time.³⁴

Fees for essential goods and services during incarceration.

In many cases, incarcerated individuals must purchase essential goods and services because, increasingly, correctional institutions fail to provide adequate access to necessities such as hygiene products, adequate food, stamps, and over-the-counter medicines.³⁵ Whereas the state once paid for the cost of providing things like aspirin or toothpaste to those in its custody, now correctional facilities sometimes receive commissions (or “kickbacks”) from private vendors who have exclusive contracts to sell those goods at the facility’s “commissary.” A New York study found that approximately three in four incarcerated individuals buy basic necessities, spending at least \$175 monthly and approximately \$300 monthly on average.³⁶

Fees for medical care

In addition, many (perhaps most) incarcerated people are charged copays for their medical care. In Texas prisons, for example, incarcerated people must pay \$13.55 per medical visit, a fee that stands out as especially egregious considering Texas is one of a handful of states that does not pay its incarcerated workers anything for their labor.³⁷

In the federal prison system, a proposed rule issued by the Bureau of Prisons in January 2023 (“Inmate Financial Responsibility Program: Procedures”) would further deplete the limited financial resources incarcerated people earn through wages or receive from friends and family members. It would allow for the Bureau to garnish up to 50% of incarcerated people’s wages to put toward their outstanding legal

³¹ “Holt Miller Prisoner and Family Relationship Recidivism Study 1972 | Prison Legal News.” Prison Legal News, January 1972. <https://www.prisonlegalnews.org/news/publications/holt-miller-prisoner-and-family-relationship-recidivism-study-1972/>.

³² Wang, Leah. “Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families.” Prison Policy Initiative, December 21, 2021. https://www.prisonpolicy.org/blog/2021/12/21/family_contact/.

³³ Eisen, Lauren-Brooke. “America’s Dystopian Incarceration System of Pay to Stay Behind Bars.” Brennan Center for Justice, April 19, 2023. <https://www.brennancenter.org/our-work/analysis-opinion/americas-dystopian-incarceration-system-pay-stay-behind-bars>. Brennan Center research indicates that nearly every state takes a portion of the meagre salary that incarcerated workers may earn to compensate the corrections agency for the cost of feeding, housing, and supervising them.

³⁴ *Ibid*

³⁵ Nelson, and Rahe. *supra* note 26.

³⁶ Bardelli, Thommaso, Zach Gillespie, and Thuy Linh Tu. “Blood from a Stone: How New York Prisons Force People to Pay for Their Own Incarceration.” Prison Policy Initiative, October 27, 2021. https://www.prisonpolicy.org/blog/2021/10/27/ny_costs/.

³⁷ Lauren-Brooke, *supra* note 33.

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

financial obligations (such as fines and court costs), and it would allow for the seizure of 75% of the funds sent by their loved ones, for the same purpose. Federally incarcerated people technically participate voluntarily but may do so only because of the coercive forces of facing severe consequences for opting out.³⁸

c. After incarceration, more fees and fines are charged. These fees can impact the ability of formerly incarcerated individuals to successfully transition back into society.

Junk fees are applied in the supervision context.

When individuals exit incarceration, they may face a new set of junk fees. Over the last two decades, many judicial systems have introduced policies to charge fees to people subject to supervision. Some services where fees are charged include electronic monitoring (e.g., ankle bracelets), drug testing, and treatment programs. Forty-eight states permit a supervision fee generally. Supervision fees can range from as little as \$10 to as much as \$150 per month.³⁹ Not surprisingly, many people are unable to pay these debts. When they cannot, they face severe consequences, potentially even reimprisonment.

Fee policies are not sensitive to age. In twenty-one states, at least one jurisdiction charges a supervision fee for children on juvenile probation. In eight states where supervision is costless, fees may be charged for services used during probation.⁴⁰

Fees for post-arrest/pretrial diversion programs.

Post-arrest diversion programs typically allow—at the state’s discretion—selected individuals to avoid criminal charges if they follow a prescribed program of treatment, restitution, or community service. These programs can often have much to recommend them. But recent investigations have revealed a troubling new pattern: jurisdictions often outsource pretrial diversion programs to private companies that charge exorbitant costs to participate, in addition to myriad ancillary fees. A ProPublica investigation found that course fees in Illinois ranged from \$125 to \$175; administrative fees added another \$25 to \$35. Companies also charge additional fees for conveniences like rescheduling a missed class—or even enrolling in a payment plan.⁴¹

³⁸ Wessler, Mike. “A Sledgehammer Instead of a Scalpel: New Rules Proposed by the Biden Administration on Money Earned by or Sent to People in Federal Prison Are the Wrong Way to Go.” *Prison Policy Initiative* (blog), March 13, 2013. https://www.prisonpolicy.org/blog/2023/03/13/bop_rules/.

³⁹ Brett, Sharon, Neda Khoshkhoo, and Mitali Nagrecha. “Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay.” *Fines and Fees Justice Center*, June 9, 2020. <https://finesandfeesjusticecenter.org/articles/financial-sanctions-intersect-with-probation/>.

⁴⁰ National Juvenile Defender Center. “The Cost of Juvenile Probation: A Critical Look into Juvenile Supervision Fees.” Issue Brief, February 25, 2024. <https://finesandfeesjusticecenter.org/articles/the-cost-of-juvenile-probation-a-critical-look-into-juvenile-supervision-fees/>.

⁴¹ *Id.* at 27–28 (citing Rebecca Burns, *Diversion Programs Say They Offer a Path Away from Court, but Critics Say the Tolls Are Hefty*, ProPublica Illinois (Nov. 13, 2018), available at <https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions#:~:text=Illinois%20Reporting%20Project,Diversion%20Programs%20Say%20They%20Offer%20a%20Path%20Away%20From%20Court,ways%20they%20might%20not%20otherwise>).

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

Conclusion

Prison should not be a profit-making enterprise. Non-essential goods and services offered in prison should be priced at reasonable costs. But even “at-cost” may be too high in some cases. Today, many incarcerated individuals say they need to receive money from outside sources to avoid hunger, remain clean, and conduct basic activities such as reading and exercising. Correctional facilities must provide all essential goods and services to incarcerated people for free.

Disclosures are not an effective remedy. Without competition, consumers become price-takers. In far too many cases, clear and conspicuous price listings will not lead to behavior change in these markets. Vendors have exclusive rights. The balance of power is not relative but instead absolute. Meanwhile, loved ones know that their relatives living in prison are hungry or lonely. Accordingly, any law or regulation that solely mandates disclosures of fees and prices as a proposed remedy for junk fees will fail to address many junk fees that harm justice-involved people.⁴²

Excessive fees should be prohibited. Correctional facilities should prevent private companies from charging excessive fees. Fees are excessive if they are not reasonable and proportional to the cost of the good or service provided. Other considerations to help determine whether a fee is excessive include the reason for which the fee is charged and the degree of available consumer choice for the good or service.

Congress should provide support to states and local governments to reform fines and fees practices. Current policies undermine rehabilitation after exit.

- State debt-based driver’s license suspensions can make it harder for formerly incarcerated individuals to find and maintain employment. To remedy this problem, the Senate should pass S2313, the Driving for Opportunity Act.
- The presence of criminal justice debt may become a barrier to accessing housing or finding employment. Congress should pass the Fresh Start Act (H2983) to correct this. In the 117th Congress, the House version of this bill (HR 5651) had 32 cosponsors with substantial bipartisan support. In this Congress, it has 20 cosponsors from parties.
- Eliminate all fines and fees in the juvenile system. Congress should pass the Eliminating Debtor’s Prison for Kids Act of 2023 (S2448/HR4975).
- Require collectors of criminal justice debt to comply with the federal Fair Debt Collection Practices Act. In the 117th Congress, the Debt Collection Practices Act was introduced in the House (HR2628). It applied consumer protections for the collection of debts owed to a state. The Stop Debt Collection Abuse Act of 2021 (HR2572) prevents federal agencies from selling or transferring debt to a private agency until 90 days after delinquency or default and caps fees and charges charged by collectors of these debts.

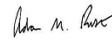
The list of fees charged to justice-involved individuals is cruel. Their existence reflects an imbalance of power. Ultimately, these fees run contrary to the aim of rehabilitation and may increase recidivism.

⁴² See National Consumer Law Center, et al. Comments submitted February 7, 2024, re: Federal Trade Commission’s Notice of Proposed Rulemaking, “Rule on Unfair or Deceptive Fees,” R207011. Pp. 10–11. https://www.nclc.org/wp-content/uploads/2024/02/2024.02.08_combined-comments-appendices.pdf (arguing the FTC’s “proposed rule’s focus on transparency and disclosure will fail to address many of the junk fees that affect justice-involved people”).

Committee on Banking, Housing, and Urban Affairs
“Consumer Protection: Examining Fees in Financial Services and Rental Housing”
May 9, 2024

Thank you for your interest and concern in these issues and their impacts on incarcerated individuals and their loved ones.

Sincerely,



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**RESPONSES TO WRITTEN QUESTIONS OF CHAIR BROWN
FROM SANTIAGO SUEIRO**

Q.1. Research suggests that the credit card late fee limits imposed by the CARD Act of 2009 did not reduce access to credit and in fact benefited consumers, such as through reduced costs. Please elaborate on the impact of the CARD Act on consumers and the credit card market.

A.1. The Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 implemented several consumer protections related to credit cards such as limits to interest rate increases, limits on double-cycle billing, transparent disclosures, and limits on fees such as late fees which were capped at \$27 for a first late payment and \$38 for subsequent late payments. Many industry actors and policymakers claim that late fee limits would restrict access to credit. However, the passage of the CARD Act proved that late fee limits don't restrict access to credit. Instead, the data shows that in the first few years following the first CARD Act rule, the law saved consumers more than \$16 billion in fees, lowered the overall cost of credit, and credit availability remained widespread.¹

For example, a 2015 study by the Consumer Financial protection Bureau (CFPB) found that, "the data showed that credit availability expanded in the years following the CARD Act as compared to its recessionary trough."² Another study from 2013 by the Federal Reserve Bank of Boston shared, "we do not find evidence that banks closed accounts at a higher rate" in the years after the enactment of the CARD Act.³ Finally, a 2014 study by researchers at the National Bureau of Economic Research find that, "the CARD Act had a precise zero effect on credit limits and [average daily balances, and] a zero effect on the number of new accounts."⁴

¹ Consumer Financial Protection Bureau, "The Consumer Credit Card Market", Consumer Financial Protection Bureau, December 2015, <https://files.consumerfinance.gov/f/201512-cfpb-report-the-consumer-credit-card-market.pdf>.

² Ibid.

³ Federal Reserve Bank of Boston, "The Credit CARD Act of 2009: What Did Banks Do?" Federal Reserve Bank of Boston, October 2013, <https://www.bostonfed.org/publications/public-policy-discussion-paper/2013/the-credit-card-act-of-2009-what-did-banks-do.aspx>.

⁴ Sumit Agarwal, Souphala Chomsisengphet, Neale Mahoney, and Johannes Stroebel, "Regulating Consumer Financial Products: Evidence From Credit Cards", National Bureau of Economic Research, September 2013, <https://www.nber.org/system/files/working-papers/w19484/w19484.pdf>.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Statement for the Record*On Behalf of the***American Bankers Association***Before the***U.S. Senate Committee on Banking, Housing, and Urban Affairs****May 9, 2024**

Chairman Brown, Ranking Member Scott, and distinguished Members of the Committee, the American Bankers Association¹ (ABA) appreciates the opportunity to submit a statement for the record for the May 9, 2024, hearing: “Consumer Protection: Examining Fees in Financial Services & Rental Housing.”

The American market for financial services is fiercely competitive. It is competitive when compared with financial services markets in other advanced economies, and it is competitive when compared with other consumer-facing industries in the United States.² Banks, credit unions, credit card companies, mortgage lenders, fintechs, and other providers of consumer financial products and services compete aggressively on all aspects of their offerings—including fees. This ultra-competitive environment benefits consumers, who are free to choose from a wide variety of high-quality, convenient, innovative, and competitively priced products and services. Not surprisingly, consumers that obtain these products and services from banks are overwhelmingly satisfied. Nine in ten Americans with a bank account (87%) say they are “very satisfied” or “satisfied” with their primary bank, and 96% rate their bank’s customer service as “excellent,” “very good” or “good,” according to a March 2024 survey conducted by Morning Consult on behalf of ABA.³

For over 50 years, Congress under both Democrats and Republicans has determined that the best way to promote competition and consumer choice – while also ensuring robust consumer protection – is through disclosure-based laws and regulations. For example, one of the express

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 approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

² Compared to other advanced economies—like Canada—that have highly concentrated and coordinated banking markets, the U.S. offers a fiercely competitive banking environment with relatively low levels of concentration. Lawrence Pruss, *The Differences Between Banking in the US and Canada*, Fin. Brand (Oct. 2, 2015), <https://thefinancialbrand.com/54467/comparing-united-states-canadian-banking-systems/>. For example, Canada, France and the Netherlands have top five-bank concentration at or above 85% while the United States has one of the lowest levels of bank concentration among advanced economies at 46%. Francisco Covas & Paul Calem, *Five Important Facts About the Competitiveness of the U.S. Banking Industry*, Bank Pol’y Inst. (Feb. 24, 2022), <https://hpi.com/five-important-facts-about-the-competitiveness-of-the-u-s-banking-industry/>. Compared to other consumer-facing industry sectors in the U.S., such as department stores, airlines or telecommunication carriers, the banking industry is far less concentrated and far more competitive when looking at the share of total sales captured by the top four firms in each industry on a national basis. *Id.*

³ Press Release, Am. Bankers Ass’n, ABA Unveils New Consumer Polling Data on Major Bank Policy Issues (Mar. 19, 2024), <https://www.aba.com/about-us/press-room/press-releases/consumer-survey-major-bank-policy-issues>.

purposes of the Truth in Lending Act (TILA), enacted in 1968, is to strengthen competition among providers of consumer credit through meaningful disclosure of credit terms.⁴ Forty years later, Congress again recognized the value of disclosures when it enacted Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The legislative history of the Dodd-Frank Act makes clear that, first and foremost, “[t]he Bureau is authorized to act to ensure that consumers are provided with accurate, timely, and understandable information in order to make effective decisions about financial transactions.”⁵ In the other enumerated laws the Dodd-Frank Act made CFPB responsible for enforcing—such as the Truth in Savings Act and the Electronic Funds Transfer Act—Congress took the same approach to consumer protection. Each law reflects Congress’ conclusion that “clear and conspicuous” disclosures promote informed use of products, which enhances competition and access to financial services.⁶

The CFPB, however, has initiated a series of blogs, circulars, advisory opinions, and rulemakings designed to upend this disclosure-based approach to consumer protection. As part of its participation in the Administration’s campaign against so-called “junk fees,” the CFPB has indicated that certain bank fees and pricing frameworks are “unfair” or “abusive.”⁷ When a regulator classifies a fee or pricing framework as inherently “unfair” or “abusive,” financial institutions cannot respond with enhanced disclosures. Instead, the threat of UDAAP enforcement may force financial institutions to cease charging the (legal and fully disclosed) fee the CFPB disfavors or to abandon the pricing framework that the CFPB deems too “complex.” The end result may be one Congress considered—but rejected—in the Dodd-Frank Act: authorizing the CFPB to define “plain vanilla” financial products and services.⁸

In other cases—such as recent rulemakings on credit card late fees and overdraft fees—the Bureau seeks to impose price caps on the fees at levels far below banks’ actual costs. Rather than enhancing consumer protection and promoting competition, both examples of market interference will result in less innovation, fewer choices and higher prices for consumers—to the detriment of financial inclusion. And, the CFPB’s actions will reduce, not spur, competition as

⁴ See 15 U.S.C. § 1601(a).

⁵ S. Rep. No. 111-176, at 164 (2010).

⁶ Bolstering these disclosure-based frameworks, when a Federal banking agency or the CFPB determines that a particular disclosure is inadequate or features of a particular product or service presents risk to consumers, the regulator may use its authority to prevent unfair, deceptive, or abusive acts and practices (UDAP or UDAAP).

⁷ As two examples, the CFPB has concluded that it is unfair to charge an overdraft fee when a transaction authorizes on positive funds, but settles on negative funds, and to charge a nonsufficient funds fee when a transaction is presented multiple times against insufficient funds in the customer’s account is unfair. See Consumer Fin. Prot. Bureau, Consumer Financial Protection Circular 2022-06 (Oct. 26, 2022); *id.*, Supervisory Highlights Junk Fees Special Edition (Mar. 2023).

⁸ Julie Margetta Morgan, CFPB, “More competition and less complexity: How the CFPB is working to lower prices in the credit card market,” CFPB Blog (May 2, 2024), <https://www.consumerfinance.gov/about-us/blog/more-competition-and-less-complexity-how-the-cfpb-is-working-to-lower-prices-in-the-credit-card-market/>. In this blog post, the CFPB mischaracterizes credit cards in a way that implies that they take unreasonable advantage of consumers’ lack of understanding, which are the ingredients of “abusiveness” in the Dodd-Frank Act’s UDAAP provision.

⁹ See Anne Flaherty, Associated Press, *Congress Wary of ‘Plain Vanilla’ Bank Proposal* (Sept. 22, 2009). As the Associated Press reported, a bipartisan group of Senators opposed the proposal, which they rightly viewed as “giv[ing] the government too much control in the marketplace” and “limit[ing] innovation.” *Id.*

limitations on fees will drive further consolidation, particularly among community banks with fewer sources of income.

We urge Congress to take the following actions:

1. Conduct rigorous oversight of the CFPB's and the Federal banking agencies' unprecedented campaign against fees. Congress should hold the agencies accountable for making predetermined policy decisions before considering the facts or feedback from stakeholders, for selecting "data" based on expediency rather than quality, and for failing to consider the predictable negative effects of its actions on markets and consumers.¹⁰
2. Pass H. J. Res. 122 and S. J. Res. 70, the Resolution of Disapproval of the CFPB's rule on credit card late fees. These resolutions would utilize the Congressional Review Act to overturn a harmful CFPB rule that would reduce competition in the credit card market, increase the cost of credit, and result in more late payments, higher debt, lower credit scores, and reduced credit access for those who need it most.
3. Ask the GAO to study whether the CFPB's overdraft proposal will reduce consumers' access to overdraft and to low-cost, full-service deposit accounts, particularly for low to moderate income and underserved consumers. If the CFPB finalizes the proposal, Congress should pass a resolution under the Congressional Review Act to invalidate the rule.

I. Overdraft Provides Needed Liquidity for Millions of Consumers

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 how best to meet their liquidity needs, whether through revolving credit, installment loans, or single payment loans, or through overdraft protection services. Regrettably, the Bureau issued a proposal in January 2024 that would effectively bring an end to an important form of short-term liquidity – overdraft services – for the consumers who need this service the most, all to advance the Administration's political campaign against "junk fees."¹¹ We have urged – and continue to urge – the Bureau to withdraw the proposal.¹²

Millions of consumers choose to use overdraft services to cover emergency expenses and other liquidity shortfalls. In recent years, depository institutions have listened to consumers'

¹⁰ Congress should conduct rigorous oversight also when the Federal banking agencies follow the CFPB's lead and engage in a campaign against fees, as described in this statement.

¹¹ See Overdraft Lending: Very Large Financial Institutions, 89 Fed. Reg. 13,852 (Feb. 23, 2024).

¹² See Letter from Am. Bankers Ass'n et al., to Rohit Chopra, Dir., Consumer Fin. Prot. Bureau (Apr. 1, 2024), <https://www.aba.com/advocacy/policy-analysis/ltr-overdraft-lending-nprm> (letter from ABA and 52 state bankers associations urging the Bureau to withdraw the proposal).

preferences and developed a variety of overdraft programs that fairly and transparently respond to consumer needs, promote free choice, and encourage competition – as even CFPB Director Rohit Chopra and Acting Comptroller Michael Hsu have repeatedly acknowledged.¹³ These innovations include sending low-balance alerts, linking the customer’s checking account to another account, imposing *de minimis* thresholds and caps on total fees that the bank may charge per day, and providing overdraft “grace periods” during which a customer can make a deposit and avoid a fee. Additionally, some banks no longer charge overdraft or NSF fees at all, and many banks offer overdraft-free accounts that meet the Bank On initiative’s National Account Standards. The Bureau’s own research confirms that, as a result of banks’ innovations, consumers are paying less in overdraft and NSF fees now than they did four years ago.¹⁴

Available evidence demonstrates that many consumers value overdraft services and use overdraft strategically to ensure that they can pay important expenses – such as rent, utilities, and medical bills – when they experience a shortfall in funds. For example, an analysis of transaction data from 11 banks found that the median size of items paid into overdraft is \$370.¹⁵ Another analysis of data from 14 financial institutions found that the average size of items paid into overdraft was \$198.¹⁶ Not surprisingly, a recent survey found that two-thirds of consumers (67%) find their bank’s overdraft service valuable – as compared with only 16% who do not find it valuable – and 8 in 10 consumers (79%) who have paid an overdraft fee in the past year were glad their bank covered their overdraft payment, rather than returning or declining payment.¹⁷ While no one likes to pay fees, 64% of consumers think it is reasonable for banks to charge a fee for an overdraft, as opposed to only 23% who think it’s unreasonable.¹⁸ And only a miniscule number of complaints submitted to the Bureau – 0.003% of the total – list “overdraft” as the issue or sub-issue of the complaint.¹⁹

¹³ 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 [overdraft].”); Remarks, Office of the Comptroller of the Currency, Acting Comptroller of the Currency Michael J. Hsu, Fairness and Effective Compliance Risk Management (Mar. 25, 2024) (“Since [late 2021], consumer overdraft related fee revenues generally have declined, . . . and overdraft program features have become more pro-consumer.”).

¹⁴ See Éva Nagypál, Consumer Fin. Prot. Bureau, Blog Post, Banks’ Overdraft/NSF Fee Revenues Evolve Along with their Policies (2022) (finding that, on average, banks of all asset sizes experienced declines in their overdraft and NSF fee revenue between 2019 (the pre-pandemic baseline) and 2022).

¹⁵ G. Michael Flores, *An Assessment of Usage of Overdraft Protection by American Consumers* 18 (2017) (included as an attachment to Am. Bankers Ass’n, *Small Dollar Credit: Millions of Small Needs Add Up to a Big Deal: Banks Should Be Allowed to Offer Customers Multiple Choices* (2017), <https://www.aba.com/advocacy/policy-analysis/small-dollar-credit>).

¹⁶ Curinos, *Competition Drives Overdraft Disruption* 8 (2021). One midsize ABA member bank reported that the average dollar amount of an item paid into overdraft where a fee was charged was \$312 in 2023.

¹⁷ Press Release, Am. Bankers Ass’n, *ABA Unveils Consumer Survey Data on Debit Cards, Overdraft and Other Banking Issues in Play in Washington* (Mar. 20, 2024), <https://www.aba.com/about-us/press-room/press-releases/consumer-survey-data-on-debit-cards-overdraft-and-other-banking-issues>.

¹⁸ *Id.*

¹⁹ Of the 4,912,269 total complaints displaying in the Bureau’s Consumer Complaint Database as of March 27, 2024, only 154 listed “overdraft” as part of the issue or sub-issue of the complaint.

The Bureau's overdraft proposal puts all the pro-consumer innovations implemented by banks at risk, despite identifying no market failure requiring additional regulation of overdraft services. The proposal reclassifies overdraft as "credit" and permits financial institutions to offer overdraft under the existing pro-consumer regulatory framework only if their overdraft fee is below a "breakeven" fee or a "benchmark" fee set by the Bureau. Charging a fee that exceeds the breakeven or benchmark fee would subject overdraft services to the requirements of the Truth in Lending Act (TILA) and Regulation Z. The operational costs combined with the compliance and litigation risks of the proposed new regulatory framework will drive banks to stop offering traditional overdraft services to the vast majority of customers. Those banks that continue offering overdraft may reduce or eliminate pro-consumer overdraft features such as grace periods and *de minimis* thresholds for charging an overdraft fee. In addition, the proposal is likely to reduce consumer access to low-cost, full-service deposit accounts; some consumers may be denied accounts and others may be offered accounts with higher minimum balances.²⁰

We urge Congress, in conducting oversight of the CFPB, to examine how the proposal will lead banks to reduce consumers' access to overdraft services and to low-cost, full-service deposit accounts. If the CFPB finalizes the proposal, Congress should pass a resolution under the Congressional Review Act to invalidate the rule.

II. The CFPB Should Not Write Aggressive Rules to Address Largely Hypothetical Problems

In January 2024, the Bureau's crusade against "junk fees" resulted in a proposal to prohibit a fee that the Bureau admits is rarely charged, specifically an NSF fee for transactions that are instantaneously or near-instantaneously declined.²¹ In issuing the proposal, the Bureau asserts that charging NSF fees for these transactions – which include one-time debit transactions, ATM transactions, and person-to-person transactions – is "abusive" under UDAP. In doing so, the Bureau offers an aggressive, overreaching interpretation of its authority to prohibit abusive acts or practices that the Bureau will later apply to other financial services and products.

The proposal's analysis draws several outlandish conclusions, stating that consumers "lack awareness of the costs, risks and features" of their deposit accounts and that financial institutions are "taking unreasonable advantage" of consumers. The Bureau states that consumers' lack of awareness of their balance and spending is *reasonable*, even though the Bureau's own rules require NSF fees to be disclosed to consumers at account opening. Astonishingly, the Bureau states that a disclosure of the fee at point of sale would not remedy the situation because some consumers would not understand "even the most well-crafted disclosure." That statement vitiates over 50 years of federal policy premised on clear and timely disclosure as the means to protect consumers, preserve choice, and promote competition. Similarly, the Bureau claims institutions

²⁰ See Jennifer L. Dlugosz et al., Fed. Reserve Bank of N.Y., Staff Reports, Who Pays the Price? Overdraft Fee Ceilings and the Unbanked 22 (rev. July 2023), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr973.pdf?sc_lang=en (study concluding that "[w]hen constrained by fee caps, banks reduce overdraft coverage and deposit supply, causing more returned checks and a decline in account ownership among low-income households").

²¹ Fees for Instantaneously Declined Transactions, 89 Fed. Reg. 6,031 (proposed Jan. 31, 2024).

are taking *unreasonable* advantage of consumers, even though those same institutions provide consumers with tools, apps and alerts so that consumers can monitor their spending and balance in near-real time and better manage their accounts.

In addition, the Bureau makes several sweeping statements about fees that reflect an aggressive approach that Dodd Frank simply does not authorize. The CFPB characterizes these NSF fees as a windfall profit, suggesting that institutions can recover only their direct costs for an account with insufficient funds. Yet, the CFPB does not have generally authority to set fees or prices. In addition, the proposal suggests that institutions should recover these costs by charging a fee on all “successful transactions.” The Bureau does not explain why consumers who maintain sufficient funds in their accounts should pay for consumers who attempt transactions with insufficient funds. Finally, the Bureau pronounces these NSF fees as “penalty fees,” suggesting that they are unlawful, which is not correct. These fees, like others the Bureau has attacked, are deterrence fees that encourage sound account management.

We urge Congress, in conducting oversight of the CFPB, to press the CFPB to rescind the proposal. The Bureau should not write rules that exceed their authority, that are addressed to largely hypothetical problems. The Bureau should instead use its resources to educate consumers on how to manage their accounts, taking advantage of all the tools and apps available to them.

III. The CFPB’s Credit Card Late Rule Will Cause More Late Payments, Increased Debt, Reduced Credit Access, and Higher APRs For All Consumers

In March 2024, the CFPB finalized a rule to lower the safe harbor for allowable credit card late fees from \$31 to \$8.²² The CFPB’s rule is inconsistent with the law and the Bureau’s authority and uses faulty methodology and data to calculate economic costs, among other shortcomings. The rule will reduce competition in the credit card market, increase the cost of credit, and result in consumer harm in the forms of more late payments, higher debt, lower credit scores and reduced credit access for those who need it most.

Credit cards provide valuable consumer benefits including income- and consumption-smoothing, convenience, security, fraud protection, merchant dispute rights, credit-building opportunities, and cardholder benefits and rewards. The credit card market is highly competitive, with nearly 4,000 issuers offering credit card options designed to meet a wide range of consumer needs and preferences. Credit card issuers compete aggressively on terms, services, and products that benefit consumers at all income levels. Credit card terms and conditions are well known to and understood by consumers. Consumers receive disclosures of key terms, including late fees, in easy-to-read, consumer-tested formats. They receive clear and repeated disclosures about late fees in solicitations and applications, before and after account opening, and in monthly periodic statements.

²² Credit Card Penalty Fees Final Rule (Regulation Z) (released Mar. 5, 2024), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf.

Credit card issuers want customers to pay on time, and making on-time payments puts consumers in the best financial position. Late fees are a proven deterrent that encourage on-time payments, help cover issuers' costs associated with late payments, and allow issuers to manage their risks and sustain their business of providing credit. Importantly, late fees provide incentives to manage finances and help customers to avoid defaults and delinquencies, which can have adverse consequences.

Despite the important functions credit card late fees serve, and the competitive and transparent market in which they exist, the CFPB issued a rule to lower the safe harbor cap on late fees based on politics instead of policy. The Bureau announced the proposed rule the week before President Biden's 2023 State of the Union address, in which he announced a foregone conclusion that the administration was "cutting credit card late fees by 75 percent, from \$30 to \$8."²³

The final rule is not consistent with the requirements Congress set forth in the CARD Act, relies on faulty data, and exceeds the CFPB's authority. The CARD Act directs that any penalty fee for violating a cardholder agreement – including any late payment fee – "shall be reasonable and proportional to such omission or violation."²⁴ It mandates agency rulemaking to implement this provision by setting a standard based on factors including the cost incurred by the creditor from the cardholder's violation, deterrence of violations, and the conduct of the cardholder.²⁵ Regulation Z, implementing the CARD Act, allows a credit card issuer to charge a penalty fee if the issuer has "determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation" or if the fee does not exceed the dollar amount set forth in the rule's safe harbor provision.²⁶ This safe harbor functions as a *de facto* regulatory cap on fees – indeed, the CFPB was unable to identify any issuer that uses the cost-based standard instead of relying on the safe harbor.²⁷

Although the CARD Act requires the regulation establishing standards for reasonable late fees to consider costs, deterrent effects, and cardholder conduct,²⁸ the final rule only examines estimated costs and fails to meaningfully consider deterrence or cardholder conduct in lowering the safe harbor late fee for larger issuers to \$8.²⁹ The CFPB's final rule lowered Regulation Z's safe harbor for late fees to \$8, albeit only for "larger credit card issuers," with at least one million open credit card accounts.³⁰ However, nothing in the CARD Act gives the CFPB authority to set different rules – that consider only some of the required statutory factors – for certain credit card issuers.

Not only does the CFPB's final rule fail to incorporate statutorily required factors other than costs, it does not allow banks to recover all of their costs for late payments. The rule's cost

²³ White House, State of the Union Address, <https://www.whitehouse.gov/state-of-the-union2023/> (Feb. 7, 2023).

²⁴ 15 U.S.C. § 1665d.

²⁵ *Id.* § 1665d(b)-(c).

²⁶ 12 C.F.R. § 226.52(b)(1).

²⁷ See Credit Card Penalty Fees Final Rule at 10-11.

²⁸ 15 U.S.C. § 1665d(a)-(c).

²⁹ Credit Card Penalty Fees Final Rule at 123.

³⁰ *Id.* at 10-11.

estimates expressly exclude post-charge-off costs that derive from late payments.³¹ Moreover, the final rule's cost estimates are based on data that does not capture the full costs of late credit card payments. The CFPB chose to use a non-public dataset the Federal Reserve designed and collected for stress-testing purposes, not for the purpose of gathering detailed cost data.³² As a result, more than lacking deterrent value, the \$8 late fee allowed under the new safe harbor does not even ensure larger issuers can recoup their full costs from late payments, in contravention of the law.

The final rule harms smaller issuers, as well. Because the CFPB directly lowered the safe harbor for larger issuers only, it summarily concluded the rule has no significant impact on smaller issuers.³³ However, this ignores that artificially lowering the late fees of the larger issuers in the highly competitive credit card market will place competitive pressures on smaller issuers. If smaller issuers are unable to compete without lowering their late fees to unsustainably low levels that cannot cover their full costs, they are more likely to exit the market, resulting in fewer options for consumers and a less competitive marketplace.

As ABA warned in comments throughout the rulemaking, the final rule will not only reduce competition and increase the cost of credit, but it will also likely cause increased incidence of late payments that will result in consumer harm in the forms of higher debt, lower credit scores and reduced credit access for those who need it most. The Bureau's misguided decision to cap credit card late fees far below banks' actual costs will force card issuers to reduce credit lines, tighten standards for new accounts and raise APRs for all consumers – even those who pay on time.

We are witnessing those warnings come to fruition today, even before the final rule has become effective, as issuers are making significant adjustments to compensate for the drastic change in allowable late fees.³⁴ ABA and other trade associations have challenged the CFPB's rule in court, seeking to stop the CFPB's unlawful and anti-consumer rule from going into effect.³⁵ If the rule becomes effective, it will only accelerate market changes and increase the unfortunate but predictable consequences for consumers.

We urge Congress to pass H. J. Res. 122 and S. J. Res. 70, a Resolution of Disapproval under the Congressional Review Act. Overturning the CFPB's harmful rule now would avert most of its harmful consequences to competition and consumers, including reducing credit access for those who need it most.

³¹ *Id.* at 123.

³² *See id.* at 25.

³³ *Id.* at 266-267.

³⁴ See Lynne Marek, *PayPal, Bread Brace for Late Fee Cap*, Payments Dive (May 1, 2024), <https://www.paymentsdive.com/news/paypal-bread-synchrony-brace-cfpb-late-fee-cap-payments/714838/>; Polo Rocha, *Synchrony Hikes Interest Rates on Credit Cards to Offset Late-Fee Rule*, Am. Banker (Apr. 24 2024), <https://www.americanbanker.com/news/synchrony-hikes-interest-rates-on-credit-cards-to-offset-late-fee-rule>.

³⁵ *Chamber of Commerce v. CFPB*, Case No. 4:24-CV-213 (N.D. Tex. filed Apr. 5, 2024).

IV. The CFPB's Advisory Opinion on Section 1034(c) Fees Will Increase the Costs of Basic Banking Services, While Providing Little Consumer Benefit

In October 2023, the CFPB issued an “advisory opinion” interpreting subsection 1034(c) of the Dodd-Frank Act that went far beyond the statute’s straightforward directive that banks and credit unions with over \$10 billion in assets (covered financial institutions) timely comply with customers’ requests for information about their account.³⁶ The advisory opinion prohibits covered financial institutions from charging fees for the additional costs of responding to certain customer requests, and regulates how banks provide customer service.

The CFPB asserts that it would violate subsection 1034(c) to impose conditions that “unreasonably impede” customers from receiving covered information – a standard not found anywhere in the statute. Further, the CFPB creates a blanket presumption that almost any fee charged for fulfilling a customer information request is unreasonable and therefore prohibited by 1034(c). The CFPB does not consider whether some fees may be reasonable to help banks offset the material and personnel costs of providing certain information, particularly information the consumer was already provided or can access for free through their online banking portal. This demonstrates that the CFPB is concerned less with ensuring access to information and more with supporting the Administration’s campaign against “junk fees.”³⁷

The CFPB also failed to seek public comment before publishing the advisory opinion, as required by law. Because it creates new substantive legal obligations regarding fees and customer service, the advisory opinion should have been issued through notice-and-comment rulemaking pursuant to Administrative Procedure Act.³⁸ This would have required the CFPB to articulate the basis and purpose of the new requirements. And, it would have given all interested members of the public advance warning and the opportunity to question the facts and conclusions the Bureau relied upon, to identify unclear and contradictory requirements, and to offer important information about implementation challenges and unintended consequences. By issuing the advisory opinion without the benefit of this process, the CFPB has exacerbated regulatory uncertainty.

Financial institutions have significant questions about what the advisory opinion requires, even after it has already gone into effect. It is not clear what fees the CFPB would treat as covered by 1034(c) or when a fee meets the single exception the CFPB articulated to its blanket presumption against fees, i.e., when information was already “repeatedly” requested and provided to the customer. It is not clear, either what timeframe the CFPB considers reasonable for banks to respond to consumer requests.

³⁶ See generally, CFPB Advisory Opinion: Consumer Information Requests to Large Banks and Credit Unions, 88 Fed. Reg. 71279 (Oct. 16, 2023); see also 12 U.S.C. 5534(c).

³⁷ See e.g., White House Press Release: Biden-Harris Administration Announces Broad New Actions to Protect Consumers From Billions in Junk Fees (Oct. 11, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees/>.

³⁸ See Administrative Procedure Act, 5 U.S.C. §§ 553, 551(4).

Because the advisory opinion will make it more expensive to provide consumer bank accounts, it will make it more difficult for many Americans to access basic banking services. Moreover, it generates little real consumer benefit. Most of the information the advisory opinion alludes to is already provided to consumers free of charge, either on statements and disclosures at account opening and periodically thereafter, or electronically via online and mobile banking. It is clear the CFPB did not understand how banks provide consumers with information or consider the effect the advisory opinion could have on consumers' access to basic banking services.

V. The CFPB Is Expanding Its Campaign Despite a Lack of Data, Reasonable Analysis, Or Understanding of the Facts

In pursuit of continued fodder for its “junk fees” campaign, the CFPB has signaled its intent to target additional valued and highly regulated products and services on a theory that they are too “complex” for consumers, despite a lack of data to support that conclusion. In recent months, the CFPB has published blog posts, reports, and supervisory guidance that present an inaccurate or incomplete picture of Health Savings Accounts, mortgage lenders' use of (CFPB-created) disclosures, and mortgage servicing. We urge the CFPB to reconsider its approach to these products.

a. Mortgage Borrowers Are Protected by Fee Disclosures that Are Well-Established, Comprehensive, and Effective

For more than 30 years, Federal law has required mortgage lenders to provide multiple disclosures to assist consumers applying and shopping for a mortgage. These disclosures were generally required to be given at application (or shortly thereafter) and shortly before closing the loan. Two different Federal agencies developed these disclosure forms separately under two Federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). In 2015, the multiple forms were consolidated into one disclosure, now called the TILA-RESPA Integrated Disclosures (TRID). TRID requires creditors to provide a Loan Estimate of itemized loan and settlement costs three days after a consumer applies for a loan.³⁹ These disclosed costs must be accurate estimates and, as such, the consumer cannot be required to pay more at loan closing except in certain well-defined circumstances authorized by the CFPB.⁴⁰

Yet on March 8, the Bureau published a blog post that blames certain mortgage origination fees, including appraisal and credit report fees, title insurance, and discount points, for the challenges some consumers experience with affording their mortgage payments.⁴¹ The Bureau has criticized these fees even though the TRID rule includes several features to ensure consumers can take their Loan Estimate and shop for the best overall prices across multiple lenders. Among other limitations, creditors cannot impose any fees on consumers, except a “bona fide and reasonable”

³⁹ 12 C.F.R. § 1026.19(e)(1)(iii)(A).

⁴⁰ 12 C.F.R. § 1026.19(e)(3).

⁴¹ Julie Margetta Morgan, Blog, Consumer Fin. Prot. Bureau, Junk Fees Are Driving Up Housing Costs. The CFPB Wants to Hear from You. (Mar. 8, 2024).

credit report fee, until after the consumer receives the initial Loan Estimate and communicates an intent to proceed with the transaction.

Encouraging consumers to shop for a mortgage that offers the best terms was the objective of the Bureau's design of the TRID disclosure forms. The disclosures were the product of extensive research, public comment, and consumer testing. Despite this robust process, the Bureau on April 30 published a separate blog post that criticizes "complex pricing structures" – i.e., lenders' typical (and CFPB-mandated) practice of listing each fee that a financial institution charges a customer.⁴² The Bureau is expected to issue a request for information in the coming days or weeks, as a precursor to a rulemaking that would make substantial changes to the TRID disclosure framework.

Similarly, on April 24, the Bureau published an edition of *Supervisory Highlights*, accompanied by yet another blog post, that demonized and mischaracterized certain mortgage servicing fees.⁴³ Like mortgage origination disclosures, the Dodd-Frank Act directed the CFPB to promulgate rules that govern all aspects of mortgage servicing, including extensive and prescriptive rules on fees. In 2013, the Bureau issued comprehensive mortgage servicing rules under Regulation X, implementing the Real Estate Settlement Procedures Act (RESPA), and Regulation Z, implementing the Truth in Lending Act (TILA) (collectively, the 2013 Servicing Rules). Since 2013, the Bureau has issued numerous amendments and interpretive rules to the 2013 Servicing Rules, most recently, the sweeping revisions issued on October 16, 2016 (2016 Amendments), which went into effect in October 2017 and April 2018.⁴⁴

In the years since these rules were promulgated, mortgage servicers have expended considerable resources to comply with them, and during the COVID-19 pandemic, servicers helped more than 8-million families stay in their homes. The industry takes pride in the important role that it plays in the mortgage market, particularly helping distressed borrowers avoid foreclosure and stay in their homes via more affordable and sustainable mortgage payments. Even as recently as last month, the CFPB acknowledged that the industry has kept foreclosure rates near all-time lows.⁴⁵ Nevertheless, the CFPB's blog uses anecdotes, not data, about specific servicing failures to paint an inaccurate narrative about an entire industry.

In sum, the fees and costs associated with mortgage originations and servicing are highly regulated under robust Federal regulations that mandate accurate itemizations, strict timing requirements on disclosures, prescriptions on certain adverse fees, and strong remedies for violations. Although ABA's members believe there are multiple targeted reforms and clarifications that would greatly enhance the legal framework for consumers and banks alike,

⁴² Blog Post, CFPB Publishes Research Finding Higher Price Complexity Leads Consumers to Pay More (Apr. 30, 2024).

⁴³ Press Release, Consumer Fin. Prot. Bureau, CFPB Takes Action to Stop Illegal Junk Fees in Mortgage Servicing (Apr. 24, 2024).

⁴⁴ Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 72,160 (Oct. 16, 2016) [hereinafter 2013 Mortgage Rules].

⁴⁵ Consumer Fin. Prot. Bureau, *Supervisory Highlights, Mortgage Servicing Edition*, 1 (Apr. 2024), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-33_2024-04.pdf.

there is no justification for the Bureau's ongoing accusations that lenders are acting uncompetitively and charging excessive fees that offer no benefit to consumers. The existing legal protections for mortgage borrowers do not allow for harmful market behavior, and banks' record reflects faithful compliance to the law and their commitment to serve their communities.

b. Health Savings Account Fees Provide Significant Tax Savings and Other Benefits to Consumers

Health Savings Accounts (HSAs) provide significant tax savings on health care, particularly during periods of high inflation, and benefit consumers in a number of ways. On May 1, 2024, the CFPB issued a report that criticized HSAs for the fees charged by organizations that offer HSAs and an alleged lack of competition.⁴⁶ The CFPB's criticisms of HSAs are not data-driven or impartial, but appear to be premised on the CFPB's desire to advance its "junk fees" campaign rather than respond to how consumers use this product.

HSAs provide considerable benefit to consumers. HSA funds earn interest like other bank accounts and may be invested. The account is completely portable, just like an IRA. The funds in an HSA belong to the individual employee, not their employer and remain with the employee if the employee switches jobs. The unspent funds never expire at the end of the year and automatically roll over from one year to the next. Furthermore, HSAs provide additional "catch-up contributions" when an individual turns age 55.

HSA interest rates have been increasing in line with broader market trends, and consumers can still earn a reasonable return on their HSA balances. The CFPB's claim that HSAs cost "significantly more in fees than they earn in interest" does not accurately reflect the current market landscape. Consumers have multiple options for how the balances are invested, including keeping the balance in cash or investing the balance in low-cost mutual funds.

With more than 1,600 approved HSA administrators in the country, this strong and competitive marketplace allows consumers to choose the provider that best suits their financial needs, contrary to the CFPB's claims that HSA fees are complex and hold consumers captive.⁴⁷ Moreover, HSA customers clearly don't agree with the CFPB: there were approximately 36 million HSAs in the U.S. in 2023, yet the CFPB concedes there were only 189 complaints about HSAs filed in 2023 (and, in fact, even this may be an overstatement).⁴⁸ The dramatically low number of complaints speaks volumes about how this product meets U.S. consumer needs.

⁴⁶ Issue Spotlight, Consumer Fin. Prot. Bureau, Health Savings Accounts (May 2024).

⁴⁷ CFPB, "Issue Spotlights: Health Savings Accounts" (May 2024).

⁴⁸ https://files.consumerfinance.gov/f/documents/cfpb_health-savings-account-issue-spotlight_2024-04.pdf; Rohit Chopra, "Statement of CFPB Director Rohit Chopra on Medical Financial Products" (May 1, 2024), <https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-on-medical-financial-products/>.

⁴⁹ See Issue Spotlights: Health Savings Accounts at 2 n.3. Searching the CFPB's [complaint database](#) using the same keywords as the CFPB did shows only 76 complaints in 2023, not 189.

CFPB's characterization of a "complex fee structure" is not accurate or reflective of the current state of the HSA market. The CFPB's report refers to various fees HSA providers charged in the past, such as monthly maintenance fees, paper statement fees, outbound transfer fees, and account closure fees. However, today, paper statement fees can be easily avoided by switching to electronic statements, and these other fees have been largely eliminated by most major HSA providers as a result of competition – dynamics not reflected in the CFPB's report.

Similarly, the CFPB's outdated mischaracterization of "obstacles and fees when seeing to switch" HSA account does not reflect reality. Today, consumers rarely if ever pay exit fees, outbound transfer fees, or account closure fees, and many HSA providers now offering free account closures and transfers. Past delays in account transfers between HSA providers have been resolved, mainly through improved processes and customer service.

In sum, the CFPB's attack on HSAs appears to be motivated by politics rather than reality. The CFPB should not move forward with any efforts to disrupt a competitive market for a product that offers consumers substantial benefits.

VI. The FDIC Has Disregarded Established Legal Requirements in Restricting Nonsufficient Funds Fees

Not to be left out of the campaign against "junk fees," the Federal banking agencies have disregarded established legal requirements for policymaking, particularly with respect to nonsufficient funds (NSF) fees. In 2021, the FDIC established new expectations — effectively changing existing law — regarding representment NSF fees⁴⁹ through a Financial Institution Letter issued in August 2022⁵⁰ (FIL) and revised in June 2023⁵¹ (Revised FIL), thereby skirting the Administrative Procedure Act's (APA) requirements for issuing binding rules. ABA continues to urge the FDIC to rescind the FIL and Revised FIL.

No statute or regulation prohibits a bank from charging a representment NSF fee when it returns a transaction presented against insufficient funds in the customer's account. Moreover, Regulation DD requires banks to disclose the NSF fees they charge.⁵² But in 2021, FDIC examiners — without warning — began scrutinizing account disclosures to determine whether

⁴⁹ When a merchant submits a check or ACH transaction initiated by a customer and the customer's account does not have sufficient funds to cover the payment, the bank may return the item to the merchant and charge an NSF fee. The fee covers the cost to process the return and serves as a penalty to encourage responsible deposit account management. A merchant has the right to resubmit the transaction to the bank with the expectation that the customer will have money in his account so that the transaction will be paid. If the account balance remains insufficient to pay the transaction, the bank may return it a second time and charge another NSF fee. A bank has no control over whether, or when, a merchant resubmits a transaction.

⁵⁰ Fed. Deposit Ins. Corp. (FDIC), Supervisory Guidance on Multiple Re-Presentment NSF Fees 3 (2022), <https://www.fdic.gov/news/financial-institution-letters/2022/fil22040a.pdf> [hereinafter, FIL].

⁵¹ *Id.*, Supervisory Guidance on Multiple Re-Presentment NSF Fees (revised 2023), <https://www.fdic.gov/news/financial-institution-letters/2023/fil23032a.pdf> [hereinafter, Revised FIL].

⁵² See Reg. DD, 12 C.F.R. § 230.4(a)(4) (requiring banks to disclose the "amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed").

they adequately (in the judgment of the examiner/agency) informed consumers that they could be charged representment NSF fees. If not, the FDIC began citing banks for engaging in a “deceptive” act or practice under section 5 of the FTC Act and required banks to conduct a manual, time-intensive “lookback” process to identify represented transactions in customers’ accounts over a multi-year period.⁵³ The FDIC also made clear that following the FDIC’s new disclosure requirements does not protect an institution from an “unfairness” claim by the FDIC.⁵⁴ An unfairness claim requires a finding that the act or practice “is not reasonably avoidable by consumers,”⁵⁵ but consumers have ample opportunity to avoid multiple NSF fees through bank notifications and access to online banking and text alerts.

Thus, the FDIC concluded that legal and fully disclosed NSF fees could constitute UDAP violations, and then applied that conclusion retroactively. By avoiding the rulemaking process, the FDIC lost a valuable opportunity to obtain broad public feedback on the practical implications, costs, and benefits of the proposed policy change. This process encourages adoption of a regulatory framework that benefits both consumers and financial institutions as well as promotes public acceptance and the longevity of the regulatory policy change.⁵⁶

Regrettably, the Office of the Comptroller of the Currency, the Federal Reserve Board of Governors, and the CFPB decided to follow the FDIC’s lead and scrutinize banks’ decisions to charge representment NSF Fees.⁵⁷ All three agencies went beyond the FDIC’s focus on disclosures and began citing banks for unfairness violations. Last fall, an ABA member reported that its Federal Reserve examiner directed the bank to cease charging *all* representment NSF fees immediately.

We continue to urge the FDIC to rescind the FIL and Revised FIL. We urge the CFPB and the other Federal banking agencies to cease issuing UDAP violations for this lawful practice. In

⁵³ The FDIC has cited banks for UDAP violations on the basis of the FIL and Revised FIL despite a prohibition in the agency’s regulations against taking enforcement actions based on supervisory guidance.” See 12 C.F.R. § pt. 302 (App. A).

⁵⁴ See FIL at 2.

⁵⁵ 15 U.S.C. § 45(n).

⁵⁶ For an in-depth exploration of the deficiencies of the FIL and Revised FIL, see Letter from Jonathan Thessin, Am. Bankers Ass’n, to Martin Gruenberg, Chair, Fed. Deposit Ins. Corp. (Feb. 12, 2024), <https://www.aba.com/advocacy/policy-analysis/ltr-overdraft-lending-nprm>.

⁵⁷ In March 2023, the Bureau issued a Supervisory Highlights publication that stated that examiners have found that banks engaged in unfair acts or practices in violation of section 1031 of the Dodd-Frank Act (UDAAP) by charging Representment NSF Fees. Consumer Fin. Prot. Bureau (Bureau), Supervisory Highlights: Junk Fees Special Edition, Issue 29, Winter 2023, at 5-6 (Mar. 2023), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights-junk-fees-special-edition_2023-03.pdf. In April 2023, the OCC issued a bulletin that similarly stated that the agency has issued findings that the practice of charging these fees “was unfair and deceptive.” Office of the Comptroller of the Currency (OCC), Overdraft Protection Programs: Risk Management Practices, OCC Bulletin 2023-12, at 6 (2023), <https://occ.gov/news-issuances/bulletins/2023/bulletin-2023-12.html>. Finally, in September 2023, the Federal Reserve issued a “Compliance Spotlight” that stated that the agency’s “examiners cited the assessment of NSF fees on represented transactions as an unfair practice in violation of section 5” of the FTC Act. Bd. of Govs. of the Fed. Reserve Sys. (Federal Reserve), Compliance Spotlight – Supervisory Observations on Representment Fees (2023), <https://www.consumercomplianceoutlook.org/2023/second-issue/compliance-spotlight/>.

conducting oversight, Congress should make the clear that the FDIC may not change existing law without engaging in the APA's notice-and-comment rulemaking process, should not apply new expectations retroactively, and should communicate with industry when contemplating changes to the agency's expectations.

Conclusion

The Administration should abandon its campaign against “junk fees.” It has led regulatory agencies to jettison disclosure-based frameworks in favor of using UDAAP authority and price caps to target disfavored products. This impairs innovation, reduces consumer choice, decreases competition, increases prices, and restricts consumers' access to financial services.

We urge Congress to conduct rigorous oversight of the CFPB's and FDIC's unprecedented campaign against fees; pass H. J. Res. 122 and S. J. Res. 70, to overturn the CFPB's rule on credit card late fees; and examine how the CFPB's overdraft proposal will lead banks to limit consumers' access to overdraft and to low-cost deposit accounts. A return to disclosure- and market-based solutions will expand access to credit and liquidity, expand financial inclusion, and create a more prosperous economy for all.



Statement for the Record from the Bank Policy Institute

Before the U.S. Senate Committee on Banking, Housing and Urban Affairs
 "Consumer Protection: Examining Fees in Financial Services and Rental Housing"

May 9, 2024

The Bank Policy Institute welcomes the opportunity to provide input on today's Senate Banking Committee hearing titled "Consumer Protection: Examining Fees in Financial Services and Rental Housing." The hearing centers on a topic that some federal policymakers have unfortunately mischaracterized and politicized, and BPI welcomes the chance to correct those mischaracterizations.

Banks provide a variety of products and services that help consumers meet their financial needs. They frequently offer these products and services, from mortgages to payment services, at a more affordable and transparent price point than less regulated competitors like payday lenders and fintech firms.

But banks' products and services are made possible only by covering the costs of providing those products and services. For example, with respect to credit products such as credit cards, banks must account for the risk that some borrowers will default. Without covering these costs and risks, banks would be putting their own safety and soundness at risk, contrary to their legal obligations. The political narrative around so-called "junk fees" in the banking and financial services marketplace, however, promulgates the falsity that all fees charged by banks are "junk fees." Banks are always transparent with customers about fees and disclose them, as required by law. Unfortunately, the CFPB and the Administration, among others, have ignored reality and embraced political rhetoric, demonizing economically necessary charges as "junk fees."

This narrative ignores the significant benefits that accrue to consumers from their bank's consumer financial products and services and the complex set of factors that determine how these benefits get priced. For example, a deposit relationship with a bank brings consumers multiple benefits. The largest benefit is access to a payment system that works twenty-four hours a day, every day of the year, around the world. Furthermore, many consumers are paid interest on the money they hold in their accounts. And consumers are insured by the FDIC against loss on that money, with the premiums for that insurance paid not by consumers but by the bank. Similarly, the consumer benefits by opening a credit card account with the ability to pay merchants anywhere in the world, and at a 0% rate if the balance is repaid monthly; fraud protection; and travel, cash back and other rewards.

Providing these benefits to consumers requires banks to incur costs, including costs to provide 24-hour-a-day customer service and other personnel, maintain branches and other real estate, provide online banking capabilities and other digital products and services through continuous research and innovation, and ensure compliance required to operate in this highly regulated industry. To cover the costs of providing consumers these benefits, a bank must earn revenue on the account, just like any business must earn revenue to enable it to provide products and services to its customers. The types and amounts of fees charged to cover a bank's costs of providing consumer financial services, including

deposit accounts, are the result of robust competition to attract customers, within an existing regulatory regime that ensures disclosure and transparency of pricing and fees.

Further, if banks were not able to charge for services, or were limited as to the amount they could charge, the result could be harmful to consumers, as banks may simply cease offering certain products or services or charge more to consumers for other services. If banks were to cease offering certain products or services, consumers may be forced to turn to non-bank providers of certain products and services that, as the CFPB has acknowledged, may “charge higher fees and interest rates.”¹

This characterization of all bank fees as “junk fees” ignores the robust consumer protection laws and comprehensive supervisory standards by which banks must abide. The “junk fees” rhetoric has culminated in several CFPB rulemakings, such as restrictions on overdraft and credit card late fees, which would only serve to limit access to important products and services for consumers.

The CFPB’s efforts ignore the tremendous benefits consumers realize from banks’ consumer financial products and services as well as the ways in which banks respond to customer demand for lower fees. For example, in recent years, many institutions have substantially curtailed or even eliminated overdraft fees through competition; a similar trend has occurred with respect to insufficient funds fees. A prime example of the market’s response to consumer demand in the deposit account market is the recent development of a new type of low-cost bank transaction account, called Bank On.² Bank On accounts allow for limited monthly fees and opening deposit amounts in recognition of the costs of account maintenance but prohibit overdraft or insufficient fund fees. For example, the Bank On Standards include a minimum opening deposit of \$25 or less, and no or low (\$5 or less) monthly maintenance fees.³ The Bank On Standards do not permit penalty fees for low balances or account dormancy.⁴ Additionally, Bank On accounts allow for negative balances without charge to consumers.⁵

According to the most recent data about Bank On, there are now over 375 nationally certified Bank On accounts offered by banks and credit unions representing over 60 percent of the domestic deposit market, and more than half of all U.S. branches of banks offer Bank On certified accounts.⁶ As of 2021, more than 14 million Bank On certified accounts had been opened across 28 reporting institutions, a 67 percent increase from the previous reporting year, and of those, over 5.8 million accounts were open and active as of 2021.⁷ Based on 2021 data, neighborhoods with over 50 percent minority representation, which make up 13 percent of all neighborhoods, accounted for 32 percent of ever-

¹ Shawn Sebastian, CFPB Blog, “New effort focused on financial issues facing rural communities,” (Mar 10, 2022), available at: <https://www.consumerfinance.gov/about-us/blog/new-effort-focused-on-financial-issues-facing-rural-communities/>.

² For more information about Bank On, see <https://joinbankon.org/>.

³ See Bank On, Bank On National Account Standards (2023-2024), <https://joinbankon.org/wp-content/uploads/2020/10/Bank-On-National-Account-Standards-2021-2022.pdf>.

⁴ See *id.*

⁵ See *id.*

⁶ Press Release, Bank On and CFE Fund, Country’s Top Banking Regulators Celebrate Growth of National Safe Banking Partnership (May 23, 2023), [Country’s Top Banking Regulators Celebrate Growth of National Safe Banking Partnership](https://www.bankon.org/press-releases/country-top-banking-regulators-celebrate-growth-of-national-safe-banking-partnership) ([prnewswire.com](https://www.bankon.org/press-releases/country-top-banking-regulators-celebrate-growth-of-national-safe-banking-partnership)).

⁷ *Id.*

opened accounts, underscoring the positive effect of Bank On accounts on minority communities.⁸ Similarly, the 2021 data shows that neighborhoods with over 50 percent low-to-moderate-income households, which make up 20 percent of all neighborhoods, represented 40 percent of ever-opened accounts.⁹

The CFPB's rulemakings also ignore the high level of competition in the credit card market, which its own credit card report has even acknowledged. The CFPB's final credit card late fee rule embodies the flaws of the "junk fee" campaign by disregarding the rule's ultimate negative impact on consumers. First, lower late fees may cause more consumers to pay late, which would damage consumers' credit scores and decrease their access to credit in the future or result in higher interest rates. Additionally, interest rates and other charges on subprime credit cards could increase to account for higher default risks, and for prime customers, premium cards could face higher maintenance fees and fewer benefits. The costs of providing credit cards do not disappear – they have to be recouped through either higher rates or less available credit.

We encourage the Committee to consider the benefits that customers receive from bank products and services and the harm consumers could face from diminished access to these products. Politicizing late fees and other legitimate fees would ultimately harm the consumers the CFPB seeks to help.

⁸ Paul Calem and Yasmeen Abdul-Razeq, "Bank On" Transaction Accounts and Financial Inclusion: New Data Shows Continuing Success (July 25, 2023), <https://bpi.com/wp-content/uploads/2023/07/Bank-On-Transaction-Accounts-and-Financial-Inclusion-New-Data-Shows-Continuing-Success.pdf>.

⁹ *Id.*



May 8, 2024

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

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

Dear Chairman Brown and Ranking Member Scott:

The Consumer Bankers Association (CBA) submits the following comments for the hearing titled "Consumer Protection: Examining Fees in Financial Services and Rental Housing." CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets. CBA will focus our comments on the Consumer Financial Protection Bureau's (CFPB or Bureau) credit card late fees and overdraft rules as they are often inappropriately lumped into the White House's "junk fees" campaign, which purports to minimize fees charged to consumers by several industries, including but not limited to banks, lodging, transportation, groceries, and entertainment.

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

Credit Card Late Fees

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

¹ <https://www.politico.com/newsletters/west-wing-playbook/2024/04/24/bidens-growing-junk-fee-movement-00154186>

² <https://www.consumerfinance.gov/rules-policy/final-rules/credit-card-penalty-fees-final-rule/>



campaign on “junk fees.”

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

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

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

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

³ https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf#page=8

⁴ <https://consumerbankers.com/press-release/facts-matter-cba-uses-cfpb-data-to-set-record-straight-on-card-act-report/>

⁵ https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=227



Overdraft

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

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

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

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

⁶ <https://consumerbankers.com/press-release/cba-releases-national-empirical-survey-results-showing-consumer-value-and-need-for-bank-overdraft-products/>

⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-close-bank-overdraft-loophole-that-costs-americans-billions-each-year-in-junk-fees/>



transactions, to extended grace periods, to cushions before overdraft fees are charged— up to \$50.⁸ Further, banks have innovated and may compete by offering additional features not captured by the CFPB’s reports, such as: real-time payment updates; payment control, so that consumers can choose to pay or return certain individual checks and payments when their balances are negative; and low balance alerts.⁹ Alarming, the CFPB’s proposed rule ignores these trends and cites data that is more than a decade old in its evaluation of the overdraft market.¹⁰ The CFPB’s reliance on this decade-old data means that its proposed rule fails to account for major shifts in market practices and innovations and relies on inaccurate data to justify its rulemaking.¹¹

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

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

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

Conclusion

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

⁸ https://files.consumerfinance.gov/f/documents/cfpb_overdraft-table_2023-05.pdf

⁹ <https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies>

¹⁰ https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf

¹¹ For example, when the proposed rule states that a majority of overdraft fees are paid by frequent overdraft users (ten or more overdrafts a year), who constitute approximately nine percent of all checking accounts, it importantly does not reflect the current state of the market. It fails to account for the significant consumer-friendly innovations introduced into the market by the largest institutions or how those changes have improved consumers’ financial health. More recent surveys of consumers from the Financial Health Network estimate that frequent overdrafters comprise nine percent of all overdrafters (as opposed to overall checking accounts, per the Proposal).¹¹ CBA’s survey found that only three percent of respondents who reported overdrafting in the last 12 months did so ten or more times (or less than two percent of all consumers in the study).

¹² <https://curinos.com/our-insights/update-competition-drives-overdraft-disruption>



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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Johnson", written over a light blue horizontal line.

Lindsey D. Johnson
President and CEO
Consumer Bankers Association



Anthony R. Hernandez
President/CEO

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May 8, 2024

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

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

Dear Chairman Brown and Ranking Member Scott,

On behalf of America's Defense Credit Unions and over 37 million members, I am writing in response to the Senate Committee on Banking, Housing and Urban Affairs hearing on "Consumer Protection: Examining Fees in Financial Services and Rental Housing." The Defense Credit Union Council (DCUC) advocates for all defense credit unions located on United States military installations, and serving these communities living outside installations, stateside and abroad.

Everything we do is in support of our military and veteran communities, no matter which credit union they join. We are always concerned when unsuspecting consumers are subject to unfair and deceptive trade practices.

The Defense Credit Union Council agrees with our credit union counterparts in each of their concerns regarding government overreach to determine fees at individual credit unions. These decisions are best left to the democratically elected boards of directors for each of these institutions; They know and understand what is best for their members because they are one of them.

Our members' concern lies with the military members, particularly junior enlisted and junior officers who are just starting on their professional journeys. Our experience is that these junior members are stationed many miles from home for the first time. Thus, there is no safety net or family members close by to cover a sudden need for cash or credit.

Being new to the military, most have not saved enough to fund emergencies and sources for cash are hard to find. Plus, the Military Lending Act eliminated small dollar lending which could have bridged the gap. As a result, hard choices often need to be made which usually result in temporarily over drafting their checking or savings account, forgetting that rent or a purchase payment is due. Thus, we need a service or a practice that provides a safety net, one that serves as a deterrent from repeating the process. There are several innovative financial products and services that are meant to protect our service members from harm.

There are always creative ways to implement a healthy overdraft program. However, burdensome regulations can stifle such innovation and eliminate worthy programs.

Eliminating such programs invites financial predators onto the scene. Defense credit unions work very hard to keep predatory lenders off the installation and away from vulnerable servicemembers. In fact, defense credit unions have a rich history of providing safe financial programs to help make ends meet. This is why it is hard to support the CFPB's credit card late-fee rule because of the adverse impacts to military families.

Serving Those Who Serve Our Country

First, issuers will be forced to increase costs to offset delinquencies and charge offs. In fact, CFPB admits that the final late fee rule will cause harm to 74 percent of consumers who pay their credit cards on time. Higher principal and interest payments will increase the burden on all military consumers. This is in addition to current challenges such as food insecurity, spouse employment, and rising childcare costs. It is especially troubling since more military families rely on credit cards to make ends meet.

Second, CFPB's new rule makes it much more difficult for military leaders to establish good order and financial discipline. When credit card late fees are significantly reduced, there is less incentive to pay on time. Although military members are instructed to honor their credit card commitments, DoD lacks the mechanisms to prevent, intervene, or enforce standards until it is too late. Thus, it is hard to see how imposing government controls on late fees will improve financial discipline and responsibility. We fear CFPB's rule will make both worse.

Finally, while we are against absurdly high late fees, we believe the market can and will regulate what people can and are willing to pay. The credit card market is already competitive. Especially when marketing access for consumers with lower credit scores or little to no credit history. Those who can offer better terms and access to credit cards will prevail. Military families are very perceptive and cautionary when it comes to additional costs.

We are the first to work with our members to ensure they are prioritizing that fees remain as low as possible and assist service members and their families when they experience financial hardships. Many of our defense credit unions are regularly honored by the DoD for their work and dedication to their military and veteran members.

The Defense Credit Union Council values any opportunity to highlight potential impacts on military members. As always, we believe we can be effective partners with regulators in ensuring a safe and secure financial environment for our Nation's military and veteran communities.

If there is anything we can do to provide additional information on the impact of this regulation or other payments issues, please let us know. My office can be reached at (202) 734-5007 or at ahernandez@dcuc.org.

Sincerely,



Anthony R. Hernandez, Colonel, USAF (Ret)



May 9, 2024

The Honorable Sherrod Brown
Chairperson
U.S. Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Tim Scott
Ranking Member
U.S. Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Brown and Ranking Member Scott:

On behalf of the nearly 100,000 combined members of the National Apartment Association (“NAA”) and National Multifamily Housing Council (“NMHC”), we are writing in advance of the Senate Committee on Banking, Housing, and Urban Affairs hearing entitled, “Consumer Protection: Examining Fees in Financial Services and Rental Housing,” to share the views of the multifamily housing industry.

NAA and NMHC represent small, medium, and large for-profit and non-profit owners, operators, developers, property managers, and service providers involved in the provision of rental housing. These firms touch all segments, including conventional, affordable, military, student and seniors’ housing. Our members strongly support efforts to improve housing access, affordability, and the experience of applicants and residents.

Fees in the Housing Context

As evidenced by this hearing, the topic of fees, including those in rental housing, is of much conversation and debate, especially in the area of transparency. By way of context, rental housing providers use fees to facilitate necessary business practices and provide residents with concierge-type services or benefits throughout the lifecycle of the lease term. During the leasing process, housing providers and renters communicate about the rental housing costs that renters should expect to pay, including the base rent, fees and other customized charges associated with an individual’s unique circumstances.

This process provides multiple touch points for housing providers and renters to discuss the terms of their relationship before renters enter into a lease contract. This legally binding document serves many purposes. It reflects the rights and responsibilities of both parties, embodies applicable federal, state and local requirements for this tenancy and serves as a resource for renters. Processes and redundancies are built into the leasing process to ensure renters do not experience hidden, misleading or junk fees in rental housing.

Industry Actions to Support Renters

NAA and NMHC members are acutely aware of the impact of housing costs on renters and the benefits of greater transparency around fees associated with a renter’s lease. That is why NAA and NMHC answered President Biden’s call for housing providers to commit to the White House Resident-Centered Housing Challenge to improve the quality of life of renters.

As part of its commitment, NAA [increased cost transparency in our national lease program](#), “Click & Lease.” NAA is rolling out its “Know Your Costs” summary on the first page of the lease in every

state where we do business which includes key cost information on rental costs, fees and charges during the lifecycle of the tenancy. This summary will apply to leases for 8 million renter households across the country.

Additionally, NAA is proud to have put together its [Renting 101](#) educational resource for renters. This resource is intended to help households themselves prepare to rent, navigate the leasing process, better understand their rights and responsibilities in the lease and learn what to expect during and after their tenancy.

In September 2023, NMHC launched the [Foundations for Rental Housing](#) and Housing Help Hub as part of our commitment to uphold the White House Resident-Centered Housing Challenge. America's rental housing providers strive to provide quality housing and customer experience to millions of residents across the country. The Foundations for Rental Housing amplifies this commitment by highlighting more than 125 rental housing providers representing more than 4.3 million units across all 50 states and D.C. who have pledged support for six core concepts that form the basis of a positive renter/housing provider relationship:

- Engage with residents to foster an atmosphere of mutual respect, trust and communication.
- Have procedures in place to respond to resident requests.
- Comply with all applicable anti-discrimination, fair housing and fair credit laws.
- Support residents who express an interest in enhancing their credit through rent payment reporting.
- Respond to requests from residents facing financial hardship who are seeking external resources.
- Rights and responsibilities of lease holders and housing providers will be contained in the lease documents.

To help signatories carry out the Foundations, NMHC also introduced a new resource website that incorporates tools for both residents and housing providers.

The Regulatory Context Around Fees

As the Senate Banking Committee examines this issue, it is important to understand the larger policy environment around fees and the relationship between a renter and their housing provider. This relationship is already highly regulated at all levels of government, particularly at the state level. Each layer of regulation results in another unique set of compliance responsibilities for housing providers applicable to all aspects of the provision of rental housing, including fees.

As it relates to advertisements for rental housing, one of the first steps in the leasing process, renters have protections under existing consumer protection, truth in advertising and fair housing laws. These laws require that housing advertisements be truthful, fair and free of misleading information, including pricing information, and ensure there is consistency in the advertised price. For example, targeted ads for the same housing that are based on zip code cannot promote different prices which could result in discrimination of protected populations under the Fair Housing Act. In another example, application fee and resident screening laws regulate fee limitations and the required disclosures for applicants during the leasing process.

Even when a residency is not covered by a lease agreement, existing laws kick in to protect renters. All 50 states and the District of Columbia have enacted landlord-tenant laws to protect both

parties in real estate transactions. There are state-specific laws that address rental housing costs and required disclosures, such as what may constitute “rent”; security deposit and fee regulations; and disclosures related to lease modifications e.g., notification of a rent increase.

State and local laws even create separate and distinct responsibilities for housing providers relating to rent and the different types of common fees and charges in rental housing transactions, such as late fees, security deposits and sometimes renters’ insurance. For example, security deposits are not considered rent. “Security” falls in a unique category under landlord-tenant laws—an additional payment that is intended to assure performance under the rental agreement. State and local security deposit laws regulate:

- How much a housing provider may charge;
- Allowable deductions and payment substitutes such as surety bonds and insurance products;
- Whether housing providers are required to hold amounts in a separate business account and accountable for interest; and
- Deadlines for disclosure and return to the renter.

These laws already provide renters with transparency and predictability of their rental housing costs. These laws also provide relief to renters when their housing provider does not comply. Importantly, rather than the one-size-fits-all approach common in federal policymaking, these laws reflect the different types of relationships that exist in housing markets and tailor disclosures to fit these scenarios.

Challenges of Added Federal Regulatory Complexity

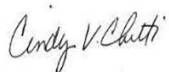
Unfortunately, current efforts to impose federal regulation of fees in the rental housing market will only add more complexity to the existing complex environment. For example, the Federal Trade Commission’s [Rule on Unfair or Deceptive Fees](#) proposes to establish new disclosure requirements for rental housing providers to inform renters of fees and other charges they should expect to pay during their residency. This proposal would fundamentally change how housing providers advertise and is likely untenable as a practical matter.

The FTC’s proposed blanket disclosure requirement of total price in an advertisement would further complicate rental housing providers’ compliance responsibilities and likely confuse and frustrate renters. Moreover, as noted above, it is not plausible to realistically know all fees that would apply to any given renter when posting an advertisement for an available rental unit. Each household has a unique set of circumstances, needs and state and local laws governing the relationship between housing providers and their residents.

Closing

In closing, we support the Committee’s efforts to better understand the issue of fees in all contexts but urge caution in pursuing additional federal regulations on rental housing providers. This area of the law is well governed at the state and local level. New rules would only complicate the ability of rental housing providers to comply with the law and not measurably improve the experience of prospective residents. Thank you for considering our views.

Sincerely,



Cindy V. Chetti
Senior Vice President, Government Affairs
National Multifamily Housing Council



Gregory S. Brown
Senior Vice President, Government Affairs
National Apartment Association

Cc: Senate Committee on Banking, Housing and Urban Affairs