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April 1, 2024

Director Chopra  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**RE: Comments to Notice of Proposed Rulemaking, “Overdraft Lending: Very large Financial Institutions” Docket No. CFPB-2024-0002**

Public Citizen is a nonprofit consumer advocacy organization that champions the public interest in the halls of power. We defend democracy, resist corporate power, and fight to ensure that government works for the people – not big corporations. On behalf of more than 500,000 members and supporters, we submit the following comment in response to the Consumer Financial Protection Bureau (CFPB or Bureau) Notice of Proposed Rulemaking (NPRM), “Overdraft Lending: Very Large Institutions”.

**Overdraft fees are, in essence, a penalty for being financially insecure.** Many banks allow customers to pay funds to vendors in excess of what is in their bank account. When that happens, the bank charges overdraft fees. Overdraft fees often begin a chain of events that frustrate a customer’s ability to restore a positive balance, potentially leading to a cycle of debt.

**We welcome the CFPB’s regulation of very large financial institutions and urge the CFPB to consider expanding this rule to entities with \$850 million or more in assets.** The CFPB has provided multiple pathways for financial institutions to determine whether an overdraft is considered above breakeven overdraft credit. Because there is a formula banks can use to calculate their breakeven point, smaller institutions do not need an exemption from the forthcoming rule based on the size of their institution. In addition, a regulatory flexibility analysis (IRFA) will not be required for this expansion because the rule will not have a significant economic impact on a substantial number of small entities (SISNOSE).<sup>1</sup> If the CFPB does not expand the institutions covered under this rule, we fully support the Bureau’s plans to monitor the market’s response before determining whether to alter the regulatory framework for financial institutions with assets less than or equal to \$10 billion.

<sup>1</sup> The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (SISNOSE). The CFPB is also subject to specific additional procedures under the RFA involving convening a panel to consult with small business representatives before proposing a rule for which an IRFA is required.

**Commented [SH1]:** Is there anything you want to add on this point? If not, I would cut it from the bolded sentence.

**Commented [CM2]:** Do we want to support including more banks? Or go the “this is a good start, we hope CFPB expands in the future” route

**Commented [CM3R2]:** This is a slight deviation from the coalition ask which simply agrees with the CFPB’s plans to monitor the market before expanding the rule.

**Commented [GU4R2]:** I think this makes sense. I also think it is good to encourage them to think about it now...we can split the baby and say consider doing now or expanding in the future.

**The benchmark overdraft fee set by the CFPB should be \$3.** Overdraft fees bear no relationship to a bank's costs for covering overdrafts. A typical debit card overdraft fee, the most common overdraft source, comes from a transaction of less than \$24, repaid within three days.<sup>2</sup> Put in lending terms, a \$34 overdraft fee for a \$24 loan of three days equals a 17,000% APR.<sup>3</sup> Nearly 80 percent of overdraft fee revenue comes from only 9 percent of accounts, and most of these frequent overdrafters usually have a median account end of day balance of less than \$450.<sup>4</sup> Despite overdraft fees coming from low balance accounts and being seemingly infrequent, these types of bank fees amount to nearly \$12 billion a year, a burden for consumers and a source of predatory revenue for banks.<sup>5</sup>

Many banks have already shown that they can sustain overdraft coverage without charging any fees. The \$3 benchmark reflects a benchmark price that was calculated based on average costs of covering overdrafts and not skewed by outlier cost some banks may incur. Setting the benchmark price above \$3 will expose consumers to unreasonable fees from banks that do not incur significant costs from providing overdraft coverage. Furthermore, the breakeven fee option that banks can determine individually gives banks that are incurring higher costs an alternative route to charge fees that cover their cost if those costs are higher than \$3.

**"Periodically" should be defined as no more than once per calendar month** in instances where an overdraft credit is *not* excepted from Regulation Z and is therefore subject to the Regulation Z offset prohibition. According to regulation Z, banks may obtain a consumer's voluntary agreement to repayment of some overdraft fees by periodic deduction from the consumer's asset account at the institution. Banks may not immediately take funds from incoming deposits to pay overdraft balances but, they may take automatic periodic deductions to offset or repay those balances. Required repayment every month to offset an overdraft balance is in line with most credit card billing cycles and prevents institutions from collecting payments on a daily or weekly basis for overdraft fees. Monthly payments reflect a payment period that consumers are familiar with and a manageable payment frequency.

Thank you for your work to end unfair and deceptive junk fees, including overdraft fees. We appreciate the opportunity to provide this comment. Please contact Candace Milner ([cmilner@citizen.org](mailto:cmilner@citizen.org)) and/or Bartlett Naylor ([bnaylor@citizen.org](mailto:bnaylor@citizen.org)) for more information.

Sincerely,

Public Citizen

<sup>2</sup> CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges, CONSUMER FINANCIAL PROTECTION BUREAU, (July 2014) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/>

<sup>3</sup> CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges, CONSUMER FINANCIAL PROTECTION BUREAU, (July 2014) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/>

<sup>4</sup> D. Low, et al., *Frequent Overdrafters*, CONSUMER FINANCIAL PROTECTION BUREAU, (August 2017) [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_data-point\\_frequent-overdrafters.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf)

<sup>5</sup> Eva Nagypal, *Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports*, CONSUMER FINANCIAL PROTECTION BUREAU, (December 2021) [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-call\\_report\\_2021-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf)

**Commented [CM5]:** Is it preferred to add sources in the footnotes or to link them?

**Commented [SH6R5]:** For the fact sheet PDF, I would say slightly prefer footnotes so if someone uses it offline they have the info. But, links are also OK.

**Commented [SH7]:** This looks to be this stat: Four groups constituting nearly 70 percent of frequent overdrafters have low end-of-day balances (with medians between \$237 and \$439

So, it is only 70% of the "frequent overdrifter" bucket and the median is a range and that's a end of day balance.

**Commented [SH8]:** Is this the stat you are referencing? \$11.97 billion in 2019.

If so, I would say nearly \$12 billion instead of more than \$10b. Since billion is so huge, that's really a TON more money you're not capturing by wanting to keep it sounding like a round number.

**Commented [GU9]:** what does this mean?

**Commented [GU10]:** What is this? Can we define reg Z?