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March 25, 2024

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

RE: Comments to Notice of Proposed Rulemaking, "Fees for Instantaneously Declined Transactions" Docket No. CFPB-2024-0003

Dear Director Chopra:

Public Citizen is a nonprofit consumer advocacy organization with more than 500,000 members and supporters that champions the public interest in the halls of power. We defend democracy, resist corporate power, and fight to ensure government works for the people – not big corporations. On behalf of our members and supporters, we submit the following comment in support of the Consumer Financial Protection Bureau (CFPB or Bureau) Notice of Proposed Rulemaking (NPRM), "Fees for Instantaneously Declined Transactions."

Nonsufficient fund (NSF) fees that banks charge when payments are declined cost consumers upwards of billions of dollars a year. Under-resourced communities are disproportionally impacted by overdraft fees. Low- and moderate-income households are nearly twice as frequently hit with overdraft fees than higher-income households and Black and Latino Americans are more likely than white Americans to incur these fees.[1] NSF funds and overdraft fees are often cited as a reason formerly banked people no longer have bank accounts.[2] Unexpected NSF fees can begin a chain of events that make it harder for customers to keep their accounts in good standing and can lead to numerous banking and credit issues down the road.

Consumers who are impacted by NSF fees often do not understand how or when these convoluted fees are assessed, and have little recourse to avoid the fees altogether. In the fewer circumstances where consumers do understand the processing of NSF fees, they are often making a difficult choice between risking fees and not being able to cover necessities in the future.

Many institutions that would be covered by this rule have already eliminated non-sufficient fund fees, saving consumers roughly $1 billion annually, and others have made more modest changes

[1] Stephen Arves and Meghan Green, *Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be,* FINANCIAL HEALTH NETWORK, (September 2021) https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/

[2] *2021 FDIC National Survey of Unbanked and Underbanked Households*, FDIC, (July 2023) https://www.fdic.gov/analysis/household-survey/2021report.pdf

like 24-hour grace periods.[3] While these are steps in the right direction that have begun to provide relief to some consumers, they are insufficient. This rule is necessary to ensure that consumers across the board are protected from these harmful fees.

The practices identified in this proposal are appropriately broad to address the potential consumer harm that comes with the abusive practice of assessing NSF fees. While most covered institutions have already eliminated NSF fees on covered transactions, this new rule is vital to prevent future harm to consumers. Additionally, how consumers bank and use financial service products is consistently changing. The broadness of this **rulemaking** is important for preventing NSF fees where they could foreseeably arise including in technologically advanced transactions through ATMs, debit cards, and peer-to-peer transactions.

The CFPB's clarification of the Abusive Conduct Prohibition Standard is correct. In 2020, the CFPB misinterpreted abusiveness when it rescinded portions of the 2017 Payday Lending Rule. In this rule, the CFPB has clarified that their 2020 interpretation of abusiveness was inconsistent with Congress's intent to empower the CFPB to prohibit abusive content and incorrectly narrowed the CFPB's authority. Abusiveness applies to the conduct of covered institutions and aims to keep them from taking advantage of consumers through deceptive tactics. The awareness of consumers or steps consumers could have taken to avoid harm is not the intent or focus of the abusive conduct prohibition. Instead, the policy states that when gaps in understanding exist for consumers "**entities** may not take unreasonable advantage of that [understanding]gap.[4]" Thus, the CFPB's clarification of the abusiveness standard is consistent with the policy and intent therein.

This rule will ensure consumers continue to be protected from junk fees using a holistic approach. Ending the practice of charging enormous fees for instantly declined transactions is critically important. We applaud those banks that have voluntarily taken steps to end this practice. The rule will ensure that banks do not revert to charging NSF fees as the CFPB continues to eliminate junk and overdraft fees in the banking industry, and that consumers are protected from these fees in perpetuity.

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

Sincerely,

Public Citizen

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[3] R. Borne and A. Vasan, *Consumers on course to save $1 billion in NSF fees annually, but some banks continue to charge these fees*, CONSUMER FINANCIAL PROTECTION BUREAU, (April 2022) https://www.consumerfinance.gov/about-us/blog/consumers-on-course-to-save-one-billion-in-nsf-fees-annually-but-some-banks-continue-to-charge-them/

[4] *See* Abusive Policy Statement at 21887.