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April 11, 2022

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

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services; Docket Number CFPB-2022-0003

Dear Director Chopra,

On behalf of UnidosUS, we submit these comments in response to the CFPB's request for information regarding fees imposed on consumers that are not generally part of the competitive marketplace for consumers.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic* 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.

The CFPB's Request for Information (RFI) notes that there are commonly incurred fees that "exceed the marginal cost of the service they purport to cover" and that such fees may adversely impact low-income people who are already economically vulnerable.

Reducing or eliminating unexpected and unnecessary fees would benefit low-income people and Latinos. Our comment highlights fees that are commonly imposed across a range of financial products and transactions, focusing on fees associated with deposit accounts, credit cards, and small-dollar loans, which are areas of particular concern for low-income people and Latinos.

Deposit Account Costs Are Substantial

As measured in 2019, approximately 88% of Latinos maintain a deposit account, as do 77% of people earning less than $15,000, and 90% of those earning between $15,000 and $30,000

* 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.

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annually.[1] Deposit accounts may incur a wide range of fees, including maintenance fees, minimum balance fees, insufficient funds (NSF) and overdraft fees, and ATM fees. A consumer survey from 2020 indicated that Latinos report that they pay $14 per month, on average, for ATM, overdraft, and routine service charges on checking accounts, while Black account–holders report paying $12 a month. Whites indicated, in contrast, that they pay an average of $5 per month.[2]

A maintenance fee is a monthly charge that account holders may incur for having a deposit account open with a financial institution.[3] Banks charge about $1 billion annually in account maintenance fees. In 2021, average monthly fees for checking accounts that are not free hit a record high of $16.35.[4] While the average maintenance fees on all checking accounts was $7.63, Latinos and Black customers paid the highest amount in monthly fees ($12.45 and $18.29, respectively).[5]

An ATM fee is charged for excessive withdrawals from ATMs, or if a customer uses an ATM machine that outside of their bank's network.[6] Aggregate ATM fee revenues began to slowly decline in 2016, reaching $1.85 billion in 2019.[7]

A minimum balance fee is a charge that applies if an account dips below a certain balance.[8] According to a 2018 report, small and community Main Street banks generally require an average daily or monthly minimum balance of at least $626 to avoid fees in a majority White neighborhood, compared to $749 in majority Latino neighborhoods, and $871 in majority Black neighborhoods.[9]

Non-sufficient funds (NSF) fees and overdraft fees are similar, and generally describe fees that a bank may charge a customer if they overdraw their checking account.[10] According to the CFPB, banks charged an estimated $15.47 billion in overdraft and NSF fees in 2019.[11] Of these $15 billion, 80% of fees were charged to 9% of consumers.[12]

An analysis by the Financial Health Network found that "low- to moderate-income households were nearly twice as likely to overdraft than higher-income households. Black and Latinx households with accounts were also far more likely to report an overdraft on their account than White households (1.9 times as likely and 1.4 times as likely, respectively)."[13] We testified before the Subcommittee on Consumer Protection and Financial Institutions on March 31, 2022, urging Congress to do more to protect consumers from excessive overdraft fees, and a copy of our written testimony is included as an attachment to this comment (see Attachment A).

Such fees in deposit accounts are widespread across the banking sector, but the biggest banks are responsible for charging a disproportionate amount of fees. According to CFPB data, "three banks—JPMorgan Chase, Wells Fargo, and Bank of America—brought in 44%" of overdraft fees in 2019.[14] The next year, a report from the American Prospect showed that at the height of the pandemic, "JPMorgan Chase… made a stunning $1.5 billion in revenue on overdraft alone in

2020, according to recent FDIC filings. During that same period, Bank of America made $1.1 billion in profits, and Wells Fargo made $1.3 billion."[15]

These banks are not alone, however, in charging excessive amounts of overdraft fees. In 2020, six smaller banks relied on overdraft fees for more than 50% of their profit. First Convenience Bank, Academy Bank, Woodforest National Bank, Armed Forces Bank, Arvest Bank, and Gate City Bank each relied on overdraft fees for 59% to 281% of their annual profit.[16]

Finally, a survey administered by *Forbes* magazine compared average fees related to checking accounts in 2021. The survey showed that credit unions had lower overdraft fees ($25.81 vs $29.50), lower monthly maintenance fees ($2.00 vs $8.34), and lower ATM fees ($1.44 vs $2.35) than did traditional banks.[17]

In addition to creating an excessive financial burden on low-income people and Latinos, junk fees also prevent people from accessing deposit accounts. As of 2019, roughly seven million people were unbanked, with 12% of Latinos unbanked, compared to 2.5% of Whites. Some 34% of the unbanked say they do not have an account because fees are too high, and 31% say fees are too unpredictable.[18] Furthermore, research shows high and unpredictable fees push consumers out of the banking system. A CFPB study showed that the number of involuntary account closures tripled for customers who opted into overdraft protection programs as opposed to those who did not.[19] And a study by the Center for Responsible Lending found that about one million unbanked adults don't have a bank account due to high or unpredictable banking fees.[20]

Credit Cards Fees and Fines Are also Significant for Latinos

Roughly 76% of Latinos own a credit card and 56% of people earning less than $25,000 a year own a credit card.[21] Late fees are regulated by provisions in the Credit Card Accountability Responsibility and Disclosure Act of 2009, which restricts the amounts that may be charged.[22] The CFPB also sets out a "safe harbor" for late fees, which, is adjusted for inflation annually." For 2021, the safe harbors are $29 for a first fine and $40 for subsequent fines.[23]

The CFPB's report analyzed data that the Federal Reserve Board collected from the loan portfolios of bank holding companies, savings and loan holding companies, and intermediate holding companies. According to this data, financial institutions, including credit card companies, charged nearly $14 billion in late fees in 2019 and about $12 billion in 2020.[24] According to a recent CFPB study, "consumers with superprime 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."[25]

More data is needed to better understand whether such late fees are disproportionately charged to specific racial and ethnic groups. The CFPB intends to collect racial data to better inform its future work, stating, "existing data available to the Bureau do not allow the Bureau to fully examine the disparity in use, cost, and availability of credit cards by racial groups. The

Bureau intends to explore options to incorporate racial data in its data sources to inform its future work."[26]

The credit card market is among the more consolidated markets for consumer financial products. According to the CFPB, "just eight big financial players control 70% of the total balances of the market—and the credit card business is often a significant contributor to their bottom line."[27] Depository institutions (*i.e*., traditional banks) own $943 billion dollars in credit card debt, compared to a relatively small $66 billion for credit unions.[28]

Small-Dollar Loan Fees Also Raise Concerns

Two types of small-dollar loans impose high levels of fees: buy now pay later (BNPL) loans and payday loans. We discuss each of these in turn.

BNPL is a type of short-term loan that allows consumers to make purchases and pay for them at a future date over a series of installments.[29] The number of BNPL users in the United States has grown by more than 300% since 2018, reaching 45 million active users in 2021. The industry is now worth over $100 billion.[30] Data shows that BNPL companies target younger consumers, many of whom have a thin credit profile or have high levels of student debt.[31]

While popular, BNPL products carry risks for consumers, including hidden fees and late fees. Although BNPL companies promise interest-free payments without finance charges or interest, and some may make claims that they are "better than credit," consumers can nonetheless be charged a wide range of fees, "including late fees, missed payment fees, account reactivation fees, returned payment fees, and rescheduling fees."[32]

Furthermore, since many BNPL products are directly linked to either a consumer's bank account or credit card, fees can trigger punitive overdraft and nonsufficient fund fees, and can have a negative impact on a consumer's credit score. Recent research from consumer research firm Piplsay found that 74% of BNPL consumers made payments on time, 14% missed a payment once, and 12% missed a payment more than once.[33] More research and data are needed to determine the total amount of late fees that BNPL charges its customers and whether such impacts are inequitable for Latino consumers.

Five BNPL fintech providers—Affirm, AfterPay, Klarna, Sezzle, and Zip (formerly known as QuadPay)—are the most prominent in the space.[34] However, other major actors are now entering the BNPL market including PayPal, Amazon (which recently formed a partnership with Affirm), and Apple, which just announced a BNPL offering.[35]

Payday loans are a type of alternative financial service that provide fast cash, often at a high interest rate, to cover emergency situations or help pay a borrower's expenses from one paycheck to the next.[36] Roughly 12 million borrowers use payday loans and are charged as much as $9 billion each year in fees a year.[37] The Federal Reserve Bank of St Louis found that "payday storefronts are more likely to be concentrated in locations with higher-than-average poverty rates, lower income levels, more single parents, and with some minority groups."[38]

Estimates show that there are roughly 23,000 payday lenders in the United States with the highest concentration of lenders in states with industry-friendly laws and high percentages of people of color. These states include Mississippi, Alabama, and New Mexico.[39]

Our past research shows that Latinos are disproportionately impacted by payday lending. Specifically, we found that:[40]

- Latinos are more likely than the general population to use a payday loan.
- In California, payday loans drained Latino and Black communities of $247 million during just one year.
- Payday lenders are more highly concentrated in communities that are majority Black and Latino—even when accounting for income, according to a 2016 analysis of payday lenders in Florida.

Conclusion: The CFPB's inquiry into excessive and unnecessary fees is helpful to Latino consumers.

We support the CFPB's request for information on excessive fees that are generally not subject to competitive market pressures and have identified a range of fees that disproportionately impact Latinos, as well as major areas for further investigation by the Bureau. We appreciate the efforts by the CFPB to collect this information, and invite additional dialogue on this issue.

With any questions or for additional information, please contact Santiago Sueiro, Senior Policy Analyst, at ssueiro@unidosus.org.

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Attachment A

WRITTEN TESTIMONY OF
SANTIAGO SUEIRO, SENIOR POLICY ANALYST,
UNIDOS US

Presented at

"The End of Overdraft Fees?
Examining the Movement to Eliminate the Fees Costing Consumers Billions"

Submitted to

Subcommittee on Consumer Protection and
Financial Institutions

Submitted by

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March 30, 2022

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 Hispanic* 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 and different groups seeking common ground through collaboration, and that share a desire to make our country stronger. From Colorado to Missouri, 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 on this Subcommittee.

UnidosUS publishes reports, provides testimony, and advocates on policies that protect consumers, make financial services more inclusive, and improve the financial well-being of low-income people and the Latino community. For example, we supported $500 million in funding for the Community Development Financial Institutions Fund (CDFI Fund) in the latest federal budget, as well as policies that protect consumers who receive services from the financial sector, improve pathways to becoming fully banked, and include low English proficient people and mixed-status families in the financial mainstream. Our research and reports include *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (2014); *Profiles of Latinos and Banking—Technology: A Closer Look at Latinos and Financial Access* (2015); *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color* (2019); *Latinos in Finance: Investing in Bilingual Banking and Finance Professionals (*2021); *Latinos, COVID-19, and Social Belonging: Voices from the Community* (2021); and *Closing the Latina Wealth Gap: Building an Inclusive Economic Recovery after COVID* (2021).

We are grateful that the Subcommittee on Consumer Protection and Financial Institutions is examining the relevant and timely topic of overdraft fee protections. Latinos are in a precarious moment. The federal government's response to the pandemic was critical to reducing poverty and supporting low-income people and Latinos. However, as supports such as the Child Tax Credit (CTC) expire, many find themselves struggling to make ends meet. Twelve million households are behind on their rent, with Latino renters almost twice as likely as Whites to be behind on rent.[1] In addition, over the last seven days, roughly 63 million people had difficulty covering expenses—and such stressors are not proportionately distributed; this worry afflicts 38% of Latinos, compared to 23% of Whites.[2]

* 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.

Furthermore, Latinos are more likely to incur overdraft fees in part because they have fewer resources at their disposal and are disproportionately represented in low-wage jobs with fluctuating work hours and high levels of income volatility. For example:

- Latinos have fewer resources to weather income shocks. The median Latino family owns just $1,527 in liquid assets,[3] compared to $3,247 for Whites.[4]
- Latinos are disproportionately represented in jobs with poverty-level wages, with 19% of Latinos earning poverty-level wages, compared to 9% of Whites.[5]
- Hispanic and Black women are more likely than White women to be among the working poor (defined as people who, despite working, live below the federal poverty level).[6]
- For many Latinas, access to childcare remains out of reach; it is unaffordable, unreliable, or unavailable during the hours they work, meaning they must accept employment that offers flexible working hours.[7]
- The leisure and hospitality and construction industries have the highest share of workers—roughly 45%—who report income variations from month to month.[8] Latinos are heavily overrepresented in each of these industries, representing 22% of all workers in leisure and hospitality and 27% of all workers in construction.[9]
- Roughly 40% of Latino adults surveyed have done gig work[10] of some kind.[11]

Yet, Latinos are a major source of growing economic potential and dynamism, and their work is fueling the country's economy. When Latinos are fully included, their contributions produce significant benefits to the economy. For example, Latinos have a higher-than-average labor force participation rate, start businesses at more than double the overall rate for entrepreneurship, and saw their revenues grow an average of 25% over the last two years (compared to 19% revenue growth for White-owned businesses).[12] Furthermore, Latinos wield significant purchasing power: in 2020 Latino spending power grew to $1.9 trillion—an 87% increase from 2010.[13]

A recent survey by UnidosUS demonstrated that Latinas, in particular, deserve support from policymakers due to their exceptional economic contributions and hard work. Indeed, Latinas are one of the fastest-growing segments of business owners in the United States: our survey found that about half of all Latinas believe that owning a business is a very important part of the American Dream.[14]

To ensure equitable economic opportunity, low-income people must not be burdened with unfair and unnecessary expenses. We are therefore encouraged by recent announcements from some banks that they are reducing or eliminating overdraft and non-sufficient funds fees,[15] and we are in support of more banks reassessing their overdraft practices.

These actions suggest that overdraft fees are no longer necessary for the financial health of banks. While encouraging, the industry's actions are, in part, a result of renewed attention from regulators in addition to pressure from consumers in a competitive market. And because they are voluntary, such progress could be easily reversed if the environment or market conditions change.

For this reason, we strongly encourage policymakers to establish permanent and sustainable guardrails to ensure a competitive, fair, and reasonable financial services marketplace for low-income people, including Latinos.

Three overarching observations inform our work on overdraft fees. First, the data demonstrate that a majority of people who incur multiple overdraft fees make less than $50,000 a year.[16] Second, high overdraft and non-sufficient funds fees are a formidable barrier to financial services for under- and unbanked households. Third, a mix of careful regulations and market-driven solutions can improve access to financial products and services, resulting in win-win solutions for the industry and consumers.

Overdraft fees, by their nature, impact consumers when they can least afford an additional cost. They are also a fee that people of color incur at a higher rate than Whites. The data show that:

- The average amount charged for an overdraft increases almost every year. In 1998, the average overdraft fee was $22—as of 2021, it was at a record high of $34.[17]
- In 2019, banks charged an estimated $15 billion in overdraft fees.[18]
- Consumers who incur multiple overdraft fees make up 9% of people who overdraft but account for 80% of all overdraft fees.[19]
- Low- to moderate-income households are nearly twice as likely as higher-income households to overdraw an account.[20]
- Black and Latino households are far more likely than White households to report having overdrawn an account.[21]

Moreover, to create more inclusive economic opportunities, it is critical to expand access to banking for those outside of the financial mainstream. As of 2017, roughly 38 million people were under- or unbanked, with 29% of Latinos under- or unbanked, compared to 16% of Whites.

The most common reasons that consumers report for lacking a bank account are related to costs. Some 34% of those who remain unbanked say they do not have an account because fees are too high, 31% say fees are too unpredictable, and 49% indicate that they do not have enough money to meet minimum balance requirements.[22]

Improved consumer protections for overdraft and non-sufficient funds fees would help to address some of these barriers and may increase access to financial services for underserved communities. Thankfully, there are specific steps we can take to ensure that financial institutions can and do offer high-quality and affordable products to everyone. Two policy-change pathways would help to make the marketplace fairer and more dynamic.

First, excessive fees should be limited by regulatory approaches, which could include, limits on multiple fees being assessed for the same incident, caps on total fees, and reasonable grace periods to cure an overdraft. Legislation, such as the "Overdraft Protection Act of 2021" introduced by Congresswoman Maloney last year, would limit abusive overdraft fees by requiring that consumers opt-in to overdraft coverage fees and limit such fees to one per month and six in a calendar year.[23] In addition, the Consumer Finance Protection Bureau (CFPB) is currently taking comments on a promising Request for Information (RFI) that focuses on fees which are generally not subject to market competitive forces (so-called "junk" fees), which includes overdraft and similar fees.

Second, we should deepen our support for institutions that offer more inclusive and affordable banking products. Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), credit unions, and online banks all offer inclusive and affordable products, and investments in these institutions can create market-wide pressure to lower fees. Research shows, for example, that credit unions and online banks generally charge less than traditional banks in overdraft fees, monthly maintenance fees, and ATM fees.[24]

CDFIs, MDIs, and credit unions, in particular, have stronger incentives than do traditional banks to serve the needs of lower-income communities, and they are often more deeply connected to these communities. We recently spoke with several credit unions that hire bilingual staff, specifically seek to open branches in lower-income areas with high concentrations of Latinos, and ensure that materials are translated into Spanish and other common languages.

Congress should therefore consider increasing appropriations funding for the CDFI Fund program. The program invests hundreds of millions of dollars a year in capital and technical assistance support to CDFIs, allowing them to grow and serve more low-income consumers. However, the CDFI and MDI field is too small to apply meaningful pressure on the market. Additional supports are necessary to grow the field to a meaningful level.

The "Advancing Technologies to Support Inclusion Act" is one such support and would invest $6 billion in CDFIs and MDIs to upgrade their technology capabilities. This would significantly improve their ability to compete with online banks and big banks that already offer sophisticated FinTech products.

Finally, policymakers should do more to incentivize banks to sign on to Bank On national account standards, and, for their part, banks should do more to promote these no-overdraft, comparatively low-cost accounts in underserved communities.[25] Approximately 100 banks (with more than 39,000 branches) currently offer Bank On certified accounts.[26]

Some financial institutions have called for a "race to the top" business strategy as the path forward for the banking sector. We agree with that sentiment: 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 low-income people and Latinos, we will be one step closer to creating a fair, inclusive, and thriving economy.

We are grateful that the subcommittee is taking up this issue, and look forward to your questions.

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