

April 1, 2024

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

**Re: Comments on the Consumer Financial Protection Bureau’s proposed rule to update regulatory exceptions for overdraft credit provided by very large financial institutions [Docket No. CFPB–2024–0002 and RIN 3170–AA42]**

Dear Director Chopra,

On behalf of UnidosUS, we respectfully submit these comments in response to the Consumer Financial Protection Bureau’s proposed rule to update regulatory exceptions for overdraft credit provided by very large financial institutions.

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 local and national levels.

UnidosUS publishes reports, provides testimony, and advocates for policies that protect consumers, make financial services more inclusive, and improve the economic well-being of working-class people and the Latino community. For example, this year, we testified before the House’s Subcommittee on Financial Institutions and Monetary Policy in a hearing focused on financial regulations that impact working-class consumers and Latinos. 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)*.

The Consumer Financial Protection Bureau (CFPB) proposes to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by large financial institutions with more than \$10 billion in assets. This proposal would ensure that extensions of overdraft credit adhere to consumer protections required of similarly situated products unless the overdraft fee is a small amount that recovers applicable costs and losses.

The rule would have a significant positive impact on working-class consumers and Latinos. Our comment letter describes how overdraft fees impact Latino consumers and recommends a \$3

benchmark for overdraft fees. We also provide suggestions for supporting smaller financial institutions to lower their overdraft fees.

***The Bureau highlights the evolution of overdrafts from an occasional courtesy to a ubiquitous source of revenue.***

The CFPB sheds light upon the evolution of overdraft fees as, in part, an exemption created by the Federal Reserve Board to allow overdraft fees. The initial justification for making the exemption for overdraft fees was based on the common use of checks at the time and the cost of providing an overdraft service.

The Bureau explains the reasoning behind exempting overdrafts from Regulation Z in 1969. Specifically, it exempted overdrafts “from Regulation Z’s definition of finance charge[s]... for honoring checks that overdraw a checking account.”<sup>1</sup> In so doing, the Board did not rely on an interpretation of a specifically applicable part of the statute but used its authority to create regulatory exceptions.

Notably, in the early years of the regulation, decisions by financial institutions to pay an item that overdraws an account instead of returning it unpaid were an infrequent part of administering accounts.<sup>2</sup>

Over time, financial institutions began to leverage technology and expand the use of these fees to products other than checks. The Notice highlights that, in 1976, the median overdraft fee was \$5, while some banks did not charge any fee. By 1994, the average fee rose to \$15, and by 2000, it reached \$20.

The CFPB summarizes the evolution in overdraft as moving from “paying occasional or inadvertent overdrafts as a courtesy [to a] dominant component of a back-end pricing business model.”<sup>3</sup> Through this evolution, overdraft has become the biggest bank-related fee by total volume, reaching as high as \$25 billion in 2009 and \$15 billion in 2019.<sup>4</sup>

The Bureau further explains this evolution by observing that “technology and increase of debit card use have morphed from an occasional courtesy provided to consumers into frequently used and promoted products that increase costs to consumers.”<sup>5</sup> Today’s technology allows financial institutions to charge overdraft fees automatically, without any manual labor costs, and in an instant.

***The Bureau’s proposal allows financial institutions to charge a benchmark fee and creates an exception to permit flexibility for financial institutions.***

The Bureau's proposal would provide flexibility to financial institutions to charge an overdraft in one of two ways. It would allow financial institutions to determine whether an overdraft charge is considered above breakeven by either: (1) calculating its own costs and losses or (2) relying on a benchmark fee set by the CFPB. The CFPB is considering setting the benchmark fee at \$3 or higher.

***Overdraft fees have had a disproportionate impact on working-class consumers and Latinos.***

Overdraft fees create serious inequities in the financial system by charging unnecessarily high fees to individuals, many of whom are struggling financially or experiencing an economic shock. Many individuals who overdraft are found to pay hundreds of dollars in fees and are more likely to lose their account in cases where they cannot afford to pay high fees. The fees also create a barrier to obtaining and maintaining bank accounts for those who are unbanked.

The data are clear that overdraft fees disproportionately impact working-class people and people of color. The Financial Health Network (FHN) found in 2021 that low- to moderate-income households are nearly twice as likely to overdraft as higher-income households.<sup>6</sup> FHN's report showed that Black and Latino households are also about twice as likely to be charged overdraft fees than white households. Additionally, a UnidosUS survey from 2022 finds that almost half of Latinos had paid an overdraft fee.<sup>7</sup>

The effects of excessive fees on consumers can be severe. Studies show that individuals who overdraft frequently are likely to use high-cost loans from payday lenders and loan sharks to pay overdraft fees, trapping them in cycles of debt.<sup>8</sup> Consumers who spend the most in bank fees also face high rates of involuntary account closures.<sup>9</sup> 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 a 2021 survey by the Federal Deposit Insurance Corporation (FDIC) of the unbanked, high costs and fees make up three of the top five reasons unbanked people cannot access a bank account.<sup>10</sup> Our 2022 survey similarly found that such costs and fees are two of the three leading reasons that Latinos cannot access a bank account.<sup>11</sup> 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 whites.<sup>12</sup>

Fees also have implications for access to credit for unbanked and marginalized populations. The FDIC's 2021 survey of unbanked people found that only 9% of the unbanked have a credit card or personal loan compared to 72% of the total population.<sup>13</sup> The study also showed that 49% of Black households and 60% of Latino households have a credit card, compared to 78% of white households.

***The Bureau should maintain a \$3 limit on overdraft fees to save consumers billions and encourage financial institutions to find solutions to build consumer trust.***

Over the past few years, the financial system has made significant advancements in reducing costs and improving financial inclusion. At the same time, lowering overdraft fees, as the proposal advises, may allow financial institutions to maintain relationships with consumers at risk of losing their accounts and attract new consumers who see overdraft fees as a barrier to obtaining an account.

Available evidence gives some helpful insight. For example, the CFPB determined that the single largest cost or loss to financial institutions associated with overdraft programs is charged-off account balances, which most frequently occur when a consumer cannot pay the overdraft and associated fees.<sup>14</sup> Lowering overdraft fees would allow financial institutions to keep these consumers and reap the rewards from their continued loyalty as they grow financially.

A 2022 study by Bankrate found that overdraft fees had fallen to their lowest level in 13 years and that the average amount charged decreased by 11% to \$29.80.<sup>15</sup> This drop came after years of efforts by industry, consumer advocates, policymakers, federal agencies (including the CFPB and the Federal Trade Commission), and lawmakers to understand the adverse consequences of high overdraft fees and identify ways to reduce them.<sup>16</sup> These changes are paying dividends for customers: the CFPB recently reported that overall overdraft revenue decreased by nearly 50% in 2022 in comparison to 2019.<sup>17</sup>

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

- Financial technology companies such as Chime and Ally Bank eliminated overdraft fees in 2021.
- Large banks reduced their overdraft fees. Bank of America lowered fees to \$10,<sup>18</sup> Huntington National Bank and Manufacturers and Traders Trust Company lowered fees to \$15 per overdraft, and CitiBank and Capital One eliminated overdraft fees altogether.<sup>19</sup>

Many financial institutions are making adjustments in recognition of the fact that some consumers who overdraft lack access to affordable credit and thus are relying on overdrafts to help make ends meet or smooth their income flows over time. Instead of overdraft fees, they are offering affordable small-dollar loans as an alternative. This move represents an encouraging shift in thinking by leading financial institutions, who are increasingly seeing the business case for organizing around the economic circumstances of working-class consumers and creating programs that provide income smoothing, lower costs, and more flexible terms.

Lowering fees and offering products to meet the financial needs of lower-income and marginalized consumers can build trust and loyalty among them. 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 institution and to use more financial products as they improve their stability and grow financially.

Recent research by the Pew Trusts in 2023 shows that consumers look at financial institutions more favorably if the institution reduces or eliminates 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.<sup>20</sup> Lower-income people, immigrants with Individual Taxpayer Identification Numbers, and limited English proficiency consumers also need access to lower-cost and high-quality financial products to help build economic well-being. They are a largely untapped market with tremendous promise.

The CFPB's proposal would continue this momentum by making market shifts that benefit consumers with a feature of accounts, helping to propel the banking industry towards a more client-centered business model built on customer loyalty and trust.

***Future rulemaking should account for smaller financial institutions' specialized needs while addressing egregious violations.***

UnidosUS works closely with many smaller financial institutions and credit unions, some of which are Affiliates that serve Latino consumers across the country. Many of these financial institutions see a need to reduce overdraft fees and are proactively making plans to adjust their policies and business models to reduce fees. At the same time, these financial institutions have much fewer resources at their disposal than do large financial institutions, including a lack of capital and constrained technology capabilities that hinder their ability to make these changes quickly.

The Bureau should monitor the progress that these financial institutions make in adjusting their overdraft policies and provide them with resources and support to accelerate their efforts. For instance, the CFPB could work with the Office of the Comptroller of the Currency (OCC) to promote the OCC's financial health metric project, which encourages financial institutions to consider key consumer financial health metrics when making institutional policy decisions. Additionally, the CFPB could use its research capability to study business models of small financial institutions that successfully lowered overdraft fees and share these examples with the industry. Finally, the CFPB could use its convening power to discuss these findings and examples with financial institutions and other stakeholders.

The Bureau should also take appropriate steps to address the behavior of certain financial institutions that rely on overdraft fees to extreme degrees. For example, Aaron Klein of the

Brookings Institute published research in 2020 highlighting six smaller banks that relied on overdraft fees for more than 50% of their profit. He finds that 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.<sup>21</sup>

***Conclusion: The CFPB's overdraft rule will make the financial system more equitable and inclusive for all consumers.***

Overdraft fees have had a significant impact on working-class consumers for more than a decade. These fees make the banking system inequitable and negatively impact the financial health of millions of people. Lowering these fees will save consumers billions, remove a barrier to becoming banked, and open a pathway for financial institutions to adopt a more holistic business model based on customer loyalty and trust.

With any questions or for additional information, please contact Santiago Sueiro, Senior Policy Analyst, at [ssueiro@unidosus.org](mailto:ssueiro@unidosus.org).

## Notes

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<sup>1</sup> Consumer Financial Protection Bureau, Proposed Rule (PR) - Overdraft Lending: Very Large Financial Institutions, February 23, 2024, issued version, [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-credit-very-large-financial-institutions\\_proposed-rule\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf), p. 4.

<sup>2</sup> PR, p. 5.

<sup>3</sup> PR, p. 15.

<sup>4</sup> PR, p. 15.

<sup>5</sup> PR, p. 5.

<sup>6</sup> Stephen Arves and Meghan Greene, “Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be,” Financial Health Network blog, September 3, 2021, <https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/>.

<sup>7</sup> UnidosUS, “Latinos Banking and Credit Survey,” September 27, 2022, [https://unidosus.org/wp-content/uploads/2022/09/unidosus\\_oportun\\_latinosbankingandcreditsurvey\\_memo.pdf](https://unidosus.org/wp-content/uploads/2022/09/unidosus_oportun_latinosbankingandcreditsurvey_memo.pdf).

<sup>8</sup> Susana Barragan, “A New Function of an Old System: The Effect of Overdraft Protection Programs on Economic Security,” Connecticut Voices for Children, November 2020, [https://ctvoices.org/wp-content/uploads/2020/11/Bank-Overdraft-Protection-Programs\\_Just-Research-Final.pdf](https://ctvoices.org/wp-content/uploads/2020/11/Bank-Overdraft-Protection-Programs_Just-Research-Final.pdf).

<sup>9</sup> Consumer Financial Protection Bureau, “CFPB Study of Overdraft Programs: A white paper of initial data findings,” Consumer Financial Protection Bureau, June 2013, [https://files.consumerfinance.gov/f/201306\\_cfpb\\_whitepaper\\_overdraft-practices.pdf](https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf).

<sup>10</sup> Federal Deposit Insurance Corporation, “FDIC National Survey of Unbanked and Underbanked Households,” 2021 FDIC Survey, October 2022, <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

<sup>11</sup> UnidosUS, “Latinos Banking and Credit Survey.”

<sup>12</sup> Federal Deposit Insurance Corporation, “FDIC National Survey Unbanked and Underbanked Households.”

<sup>13</sup> Ibid.

<sup>14</sup> PR, p. 18.

<sup>15</sup> Karen Bennett and Matthew Goldberg, “Overdraft Fees Tumble to 13-Year Low While ATM Fees are Back on the Rise,” Bankrate, August 31, 2022, <https://www.bankrate.com/banking/checking/checking-account-survey/>.

<sup>16</sup> UnidosUS, “Written Testimony of Santiago Sueiro, Senior Policy Analyst, UnidosUS,” UnidosUS, March 30, 2023, <https://unidosus.org/wp-content/uploads/2022/03/UnidosUS-Santiago-Sueiro-Testimony-SCPI-3.30.2236.pdf>.

<sup>17</sup> Consumer Financial Protection Bureau, “Overdraft/NSF Revenue Down Nearly 50% Versus Pre-Pandemic Levels,” Consumer Financial Protection Bureau, May 23, 2022, <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/#:~:text=Overdraft%2FNSF%20revenue%20down%20nearly%2050%25%20versus%20pre%2Dpandemic%20levels&text=Overdraft%2FNSF%20revenue%20for%20the,over%20%245.5%20billion%20going%20forward>.

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

<sup>19</sup> Consumer Financial Protection Bureau, “Overdraft/NSF Metrics for Top 20 Banks Based on Overdraft/NSF Revenue Reported During 2021,” Consumer Financial Protection Bureau, May 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-table\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-table_2023-05.pdf).

<sup>20</sup> Alex Horowitz, Linlin Liang, and Gabe Kravitz, “Americans Support Affordable Small Loans in the Banking System,” Pew Trusts, June 6, 2023, <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/06/06/americans-support-affordable-small-loans-in-the-banking-system>.

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<sup>21</sup> Klein, Aaron. "A few small banks have become overdraft giants," Brookings, March 1, 2021.  
<https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants/>.