July 26, 2023

The Honorable Raphael Warnock
Chairman
Subcommittee on Financial Institutions and Consumer Protection
Senate Committee on Banking, Housing, and Urban Affairs
416 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
Ranking Member
Subcommittee on Financial Institutions and Consumer Protection
Senate Committee on Banking, Housing, and Urban Affairs
113 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Warnock and Ranking Member Tillis:

The Consumer Bankers Association (CBA) is pleased to submit this letter for the hearing entitled "Taking Account of Fees and Tactics Impacting Americans' Wallets" focused on fees assessed to consumers for banking and non-banking products. 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.

In conjunction with President Biden, the Consumer Financial Protection Bureau (CFPB or Bureau) Director Chopra has launched a campaign to rein in "junk fees," which seeks to reduce fees in several industries, including but not limited to hotel and lodging, transportation, and entertainment. In this letter, CBA seeks to address the Bureau's actions with regard to two banking-specific fees: overdraft and credit card late fees. It is essential to note that all bank-specific fees are by statute and regulation, transparent, and the consumer is notified at the time of an account/product opening and then annually, in advance, of the amount of fees associated with any banking product.

Credit Card Late Fees

On February 1, 2023, the CFPB announced a Notice of Proposed Rulemaking (NPRM) on credit card late fees that would drastically alter the credit card late fees landscape. Comments were due on May 3, 2023.

Under current Federal Reserve regulations, (1) the credit card late fee safe harbor is $30 for the first late payment and $41 for a subsequent late payment, (2) these safe harbor amounts are adjusted annually for inflation, and (3) late fees cannot be more than 100% of the required minimum payment. The NPRM proposes to (1) reduce the safe harbor amount to $8, (2) eliminate the annual inflation adjustment, and (3) cap late fees at 25% of the required minimum payment.

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On the surface, this proposal sounds good– no one likes to pay for "junk"– but the reality for consumers isn't so simple and could have significant long-term consequences.

As proposed, this rule would have significant negative impacts on both credit card customers and issuers. In fact, according to the Bureau, the only consumers who would benefit from the proposal are credit card users who routinely pay late. 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 [1] 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.[2] Banks are required by their prudential regulators to manage and offset credit risk, and a reduction of the ability for financial institutions to recoup costs would result in a tightening of credit availability for some consumers.

Reducing the safe harbor for the penalty fee from its current $30 and $41 amounts to $8 would significantly reduce the deterrent effect of the late fee, likely resulting in a greater share of late-paying and delinquent accounts. The potential effects of this likely reality are twofold: (1) more consumers will have delinquent accounts and face higher penalty APRs and be reported to credit bureaus, leading to lower credit scores, and (2) many card issuers may not be able to cover the costs associated with funding card operations or balance their credit risk portfolios and may have to exit the market entirely.

Credit card late fees are a necessary cost of providing financial products and services, and a majority of Americans agree. A February 2023 study[3] conducted by CBA found that 57% of Americans believe that credit card late fees are legitimate, nearly half of all Americans, 48%, are unaware of the consequences associated with paying a credit card bill late, and 76% agree that paying your bill on time is a personal responsibility.

The Washington Post's Fact Checker, Glenn Kessler, recently pushed a column[4] debunking the CFPB's claims that consumers would save $9 billion as a result of this proposal. It specifically highlights concern that the $8 fee may not cover bank expenses and says the CFPB's calculation excluded key expenses and losses. The article also states, "a lower fee might harm some cardholders… In the noticed on the proposed rule, [the CFPB] acknowledged that a peer-review paper published in 2022[5] found that consumers are conscious of late fees, with some deliberately trading off paying the late fee with the cost of meeting the minimum payment requirement."

Aside from the deeply flawed policies in the proposed rule, it is also procedurally deficient. The CFPB did not conduct a thorough analysis of the available economic literature on the effects or late fees, and the analysis that the CFPB did perform was not done in a transparent and consistent manner. The Bureau's flawed assumptions and deficient analysis have resulted in incorrect

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[1] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf

[2] https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/

[3] https://www.consumerbankers.com/cba-media-center/media-releases/new-poll-majority-americans-believe-credit-card-late-fees-are

[4] https://www.washingtonpost.com/politics/2023/06/09/about-that-9-billion-credit-card-late-fees-profit/

[5] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3135421

conclusions about the benefits and harm to consumers, as well as the costs issuers face in the marketplace.

Finally, a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel is required when a rulemaking will have a significant economic impact on a substantial number of small entities. CBA and other trades stated in their joint trades response to the ANPR on credit card late fees that a SBREFA panel should be required because "[o]f the approximately 824 credit card-issuing banks, more than half (452) have assets less than $750 million, and of the 3,172 credit card-issuing credit unions, nearly 85 percent (2,682) have assets less than $750 million."[6] Despite this, the Bureau has failed to hold a SBREFA panel. The Small Business Administration Office of Advocacy ("Advocacy") agrees, and stated in a public comment letter[7] to the Bureau that the CFPB had a lack of data to support its conclusion that the rule will not have a significant economic impact on a substantial number of small entities. In addition, Advocacy raised questions about the CFPB's lack of data on small depository institutions. Advocacy also stated that the rulemaking may be harmful to consumers, including small businesses, who rely on small depositories, should small depositories decide to exit the credit card market. Ultimately, Advocacy recommended that the CFPB maintain the status quo until it has sufficient data to ascertain the economic impact of this action on small entities.

Overdraft Fees

Policymakers continue to scrutinize fee-based bank products like overdraft that are valued by millions of consumers in times of need. The criticism of overdraft products fails to account for the growing number of innovative overdraft products and policies introduced over the past several years by America's leading banks. These changes have significantly reduced costs, all while providing consumers with greater choice and flexibility to meet their needs within the highly competitive and well-regulated banking system.

Banks have proactively implemented new overdraft polices such as elimination of overdraft fees, elimination of account transfer fees to coverage overages, de minimis exceptions to cover small overages (avoiding an overpriced cup of coffee), grace periods for customers to make accounts whole before overdraft fees are assessed, access to small dollar loans (discussed more fully below), elimination of extended overdraft fees, elimination of returned items fees, and more. These changes, in conjunction with clear disclosures, add continued benefit to consumers who rely on overdraft services to cover short-term gaps in finances and provide a viable service that will come at minimal or no cost.

As policymakers examine short-term liquidity products such as overdraft, it is essential to have a better understanding of consumer demand for the products, their use as a form of emergency liquidity or a financial safety net, and the evolution of the overdraft product by financial institutions. Limiting access to overdraft could hinder the ability of a consumer to pay unexpected bills or family emergencies. This would drive consumers toward less regulated and more expensive non-bank

[6] https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-comment-letter-late-fees-anpr
[7] https://advocacy.sba.gov/wp-content/uploads/2023/05/Fact-Sheet-CFPB-Credit-Card-Penalty-Fees-508c.pdf

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lenders to meet their financing needs and deprive them of the high level of consumer protections they deserve.

Research by Curinos, "Competition Drives Overdraft Disruption,"[8] found consumers make highly informed choices about when to use overdraft services. These decisions are based on real-time access to account information, clear disclosures, and personal experience. Policymakers should keep in mind that the existing regulatory framework for overdraft services acknowledges the role of informed individual choice and responsibility and is a voluntary action that is "opt in."

Specifically, the study found:

- ***Significant consumer savings:*** Newly announced changes to overdraft programs are projected to save consumers $18.3 billion from 2021 to 2025, more than $3.5 billion per year. Overdraft fees are projected to have declined by 82% since 2008, or $167 of annual savings per U.S. adult.
- ***Consumers understand overdraft***: Consumers, especially overdraft users, continue to demonstrate a deep understanding of overdraft and available alternatives. More than 60% of overdrafts come from consumers who intend to use the service. More than 80% of overdraft transactions come from consumers who opted into debit card overdraft programs with the clear intention of using it to cover their payments. And two-thirds of consumers indicate that they will incur the cost to ensure no reduction in their access to services.
- ***There are fewer frequent use of overdraft, in part as a result of bank-led innovations***: The percentage of regular overdraft users (those with 10 or more transactions annually) fell by 40% to 4.9% of the population between 2010 and 2020.
- ***Consumers use overdraft for purchases of increased size***: Bank-led initiatives aimed to help consumers avoid an unintended fee have dramatically reduced the number of small purchases tied to overdraft. Since 2008, as a result of banks' innovations, overdraft fees per U.S. adult have declined by 77%, with the average size of purchases triggering overdraft fees quadrupling from $50 to almost $200.

America's leading banks listened to consumers and policymakers, leading them to unveil new innovations for popular overdraft products which are designed to reduce or avoid fees to meet the needs of the consumer.

Conclusion

Consumers are only protected when financial products and services are subject to consistent consumer protections based on data and market realities, not changes to regulation and policy based on an unsupported ideological view. We appreciate the Senate Banking Committee's focus on the CFPB's campaign on "junk fees," and urge the Committee to consider the real-world impacts the

[8] https://curinos.com/our-insights/competition-drives-overdraft-disruption/

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proposed changes would have on consumers along with the potential safety and soundness implications the campaign on "junk fees" could have on banks across the country. CBA stands ready to work with Congress to ensure any approach to banking fee structures is well thought out and focuses on common-sense goals to allow consumers to continue access these important financial products.

Sincerely,

Lindsey D. Johnson
President and CEO
Consumer Bankers Association

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