



Written Testimony

Of

**David Pommerehn
General Counsel
Consumer Bankers Association**

May 4, 2022

**Committee on Banking, Housing, and Urban Affairs
Subcommittee on Financial Institutions and Consumer Protection**

Hearing Entitled:

“Examining Overdraft Fees and Their Effects on Working Families”

Chairman Warnock, Ranking Member Tillis and members of the Subcommittee, I am David Pommerehn, General Counsel at the Consumer Bankers Association (CBA) and I appreciate the opportunity to testify at today's hearing. In my two decades within the financial services industry, I have worked to promote consumer choice and for the establishment of products that meet consumers' needs, including overdraft services. CBA is the voice of the retail banking industry whose products and services provide access to funding for 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.

With ongoing financial difficulties due to the pandemic, the average American is struggling to ensure they have access to the necessities their families need. From gas to get to work, to groceries to feed their children, people need access to emergency liquidity at increasing rates. According to the Federal Reserve, nearly half of all American adults say they cannot cover an unexpected expense of \$400. Similarly, Bankrate states "63% of American adults say they are unable to pay an unexpected expense with their savings..." The Financial Health Network (formerly the Center for Financial Services Innovation) study found that more than a third of all households say they frequently or occasionally run out of money before the end of the month.¹

Banks are aware of these challenges and work diligently to provide access to safe and affordable products to U.S. consumers. The demand for overdraft services is based largely on customer need and choice and for many, is the last viable source of short-term liquidity. In

¹ <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>

recent years, various groups have examined how consumers use overdraft services. Some have concluded overdraft services are inherently bad for consumers. These studies have largely assumed a reasonable consumer would avoid overdraft and institutions providing overdraft services must therefore be “tricking” consumers. These assumptions are fundamentally flawed. The overdraft product is based on clear disclosures and personal experience. The decision to proactively opt-in and utilize the overdraft product is solely up to the customer.

The regulatory framework that governs overdraft services for point-of-sale (POS) and ATM transactions clearly acknowledges the role of the consumer to make informed, individual choice about what is best for their personal financial well-being. In 2010, significant changes were added to the law on POS and ATM overdraft services to increase transparency and improve disclosures.² Since the implementation of these reforms, consumers must affirmatively opt-in to overdraft services for POS and ATM withdrawals and debit card purchases, and they receive numerous written disclosures concerning their right to revoke the decision to opt-in at any time, including an account statement disclosure whenever they incur an overdraft fee. Consumer choice is central to the functionality of the overdraft product, allowing for maximum transparency. This is contrary to recent statements made by the Director of the Consumer Financial Protection Bureau (CFPB or Bureau) and other policymakers that have likened overdraft services to “junk fees” that are not properly conveyed to

² The Electronic Funds Transfer Act, 15 U.S.C. §§ 1693, *et seq.*, and its implementing regulation, Regulation E, 12 C.F.R. Part 1005, administered by the Bureau, regulates mandatory overdraft service opt-in for checking accounts. The Truth in Savings Act, 12 U.S.C. § 4301 and its implementing regulation, Regulation DD, 12 C.F.R. Part 1030, requires banks to provide to consumers disclosures about terms and costs of deposit accounts fee disclosures in checking accounts.

consumers. Statements that overdraft fees are hidden and that consumers do not choose to use them present an inaccurate and misleading depiction of the product.

The Risks of Restricting Overdraft

The restricting overdraft services would create complex challenges for consumers, service providers and merchants. For consumers, restrictions on overdraft services would reduce access to an emergency safety net on which many Americans rely. Further, merchants and service providers would be forced to deny the transaction, creating a loss of income from a given sale of goods or services.

Consumers would still incur insufficient funds fees, which in most cases are equal to the fee charged for an overdraft. In addition, if the bank or credit union does not cover the transaction, the customer may incur a returned payment fee imposed by the payee or merchant, resulting in additional fees in the form of late and/or interest related fees. In the end, the consumer may pay more in fees than if the bank had covered the item using overdraft services.³

Returned items can also result in non-monetary costs for consumers. After imposing a nonsufficient funds fee (NSF), the merchant may also report that event to a credit bureau which can adversely affect the consumer's credit score. The NSF fees can vary by merchant transaction and depend upon when the check or transaction is cleared or posted to the consumer's financial institution. When given an option, many consumers would prefer having

³ Note that this is only true for checks and ACH transactions. It is not true for ATM and debit card transactions for customers who did not opt-in. Those transactions are declined at point of sale with no NSF fee.

their purchase paid for and not returned since merchant NSF and associated fees can be higher than fees for overdraft services. Restricting the availability of overdraft services may also cause some consumers to switch to non-bank lenders who are less equipped to provide them with a suite of suitable financial products services, such as a significantly less regulated payday lender or check casher. Additionally, these institutions do not abide by the same broad federal oversight as banks, depriving consumers of the high level of regulatory protection they deserve.

Regulatory Acknowledgement

In December 2021, Office of the Comptroller of the Currency's (OCC) Acting Comptroller Michael Hsu recognized overdraft services as one of the last viable sources of short-term liquidity for many U.S. consumers. In his remarks, Acting Comptroller Hsu commented on the state of the overdraft market in the United States, highlighting the important need to provide safe and affordable short-term liquidity options for consumers within the well-regulated, well-supervised banking system.⁴

Recognizing the OCC's intent to protect financially vulnerable Americans, Hsu commented while some banks have eliminated overdraft from their financial suite, widespread adoption of this practice may yield unintended consequences. He stated: *"limiting overdrafts may limit the financial capacity for those who need it most,"* noting the import benefit overdraft services can provide to consumers. CBA agrees with the Acting Comptroller and encourages

⁴ Acting Comptroller Michael J. Hsu Remarks before the Consumer Federation of America's 34th Annual Financial Services Conference (December 8, 2021) - "Reforming Overdraft Programs to Empower and Promote Financial Health"- <https://occ.treas.gov/news-issuances/speeches/2021/pub-speech-2021-129.pdf>.

other policymakers to undertake a comprehensive review of the overdraft market before promulgating changes that may have adverse effects for consumers.

Additionally, On April 27, 2022, commenting on recent bank-led overdraft innovations while testifying before the House Financial Services Committee, CFPB Director Rohit Chopra stated: *“This is one of the beauties of a competitive market. When there is real competition [...] people can benefit across the board.”* Director Chopra understands the market is self-regulating and that banks are proactively removing or significantly decreasing these fees to ensure the retention of consumers.

Consumer Demand Leads to Change

Well informed and technically savvy consumers drove recent changes to overdraft. Driven by a commitment to meeting evolving consumer demands, America’s leading banks have unveiled innovative financial tools to provide consumers more choice and flexibility to avoid unintended fees.

In December of 2021, Curinos, a global data intelligence firm, released its ‘Competition Drives Overdraft Disruption’ study (Appendix A), which found consumers make highly informed choices about who they bank with and when to use overdraft services.⁵ These decisions are based on real-time access to account information, clear disclosures and personal experience.

⁵ Curinos, *Competition Drives Overdraft Disruption* (December 2021) - <https://curinos.com/insights/competition-drives-overdraft-disruption/> - attached hereto as Appendix A. This study was initiated at the request of the CBA to fill a research gap in better understanding consumer sentiment, and CBA provided funding for the market research survey. Curinos independently designed, analyzed and documented the research results.

Accordingly, a growing number of America's leading banks have unveiled new innovations designed to avoid overdraft fees or have an overdraft product with features selected by the consumer (Appendix B). Banks have proactively implemented new overdraft policies that benefited consumers use of the product that include: the elimination of overdraft fees, the elimination of account transfer fees to coverage overages, de minimums exceptions to cover small overages (i.e. avoiding an overdraft trigger after purchasing a cup of coffee), grace periods for customers to make accounts whole before overdraft fees are ever assessed, access to small dollar loans (discussed more fully below), eliminating extended overdraft fees, eliminating returned items fees, real-time account updates and low balance notices. We believe these and other changes, in conjunction with clear disclosures, add continued benefit to consumers who rely on overdraft services to cover short-term gaps in finances by continuing to provide a viable service at minimal or no cost.

In many cases, these changes have also been accompanied by the introduction of affordable small loans, serving as an additional emergency safety net for consumers who are unable to cover an unexpected bill with savings alone. Without access to a viable, bank offered short-term liquidity product like overdraft, consumers will be left with little recourse but to use less-supervised, less-regulated, non-depository institutions to meet their needs—an undesirable position to place vulnerable consumers.

Curinos Data – Consumers Understand Benefit & Value Overdraft

The Curinos research found the changes to bank overdraft service programs is being driven more by competition instead of regulation and the market rewards organizations that

overhaul their existing overdraft programs or develop alternative products. Institutions that are slow to act are losing customers to more aggressive competitors. As a result, financial institutions will continue to innovate and provide more low-cost liquidity options, with or without regulatory changes.

Backed by Curinos' proprietary research, the report methodology encompasses both consumers on the demand side and financial institutions on the supply side. On the demand side, Curinos leveraged an annual online consumer research study on checking account purchase behavior of approximately 12,000 respondents, and a targeted online consumer research study on overdraft behaviors. On the supply side, Curinos utilized a review of disclosures and offers from 38 financial institution websites, matching a 2015 Pew Study where possible, along with an anonymized survey of behavioral data from 14 financial institutions with \$2 billion to \$50 billion in total assets, representing \$637 billion of total U.S. consumer deposits. Findings indicate consumer demand and intense competition within financial services are driving recent changes in overdraft policies and programs. Specifically, the study found:

- ***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 they will incur the cost to ensure no reduction in their access to service.

- ***Fewer people use overdraft:*** 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, because 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.
- ***Consumers want more short-term liquidity choices:*** Consumers seek convenient and relevant alternatives to overdraft. The emergence of alternatives in the market is driving consideration of new checking purchases.
- ***Overdraft fee revenue is down significantly:*** U.S. overdraft revenue fell approximately 57% from \$40 billion in 2008 to \$17 billion in 2019.
- ***Challengers that adopt consumer-friendly policies, win market share:*** New entrants, including fintechs and challenger banks who have seen a dramatic increase in market share, have created solutions to better manage or reduce the cost of overdraft. These entities have experienced a 40% increase in account acquisition since 2017. Financial institutions that haven't adopted overdraft innovation have experienced a nearly 30% reduction in consumer acquisition.

These findings underscore the fact that, outside of overdraft, few options remain for consumers to meet their emergency liquidity needs within the well-regulated, well-supervised banking system. CBA has long warned, and bank regulators agree, further restricting access to short-

term liquidity options, such as overdraft services, would drive many families to predatory payday lenders and other expensive, less-regulated venues. Accordingly, we urge policymakers to focus on the consumer need, a complete market analysis, including the many changes already in place, and take into consideration all the facts as they consider future action. It is our commitment to provide every consumer access to highly regulated financial products and services.

Small-Dollar – An Essential Solution to Emergency Liquidity Deficits

Access to reasonably priced small-dollar liquidity products is essential to meeting consumer need with regards to cash shortfalls. While various entry-level credit products exist to meet a wide range of these needs, including traditional credit cards, personal loans, and other forms of credit, some consumers unfortunately cannot qualify.

When debating policy affecting overdraft service, we urge policymakers to also consider a viable solution to help consumers who need short-term loan options – small-dollar lending. Today, the need for accessible small-dollar, emergency credit for consumers has never been greater and banks have been encouraged by policymakers to enter or remain in the small-dollar lending market. In the past, banks worked with regulators to develop products carefully designed to ensure strong safeguards at reasonable prices. However, as highlighted in a recent report for the Government Accountability Office (GAO), depository institutions are hesitant to offer such loans in part because of the changes to related rules or guidance in recent years.⁶ In

⁶ *Banking Services: Regulators have Taken Action to Increase Access, but Measurement of Actions' Effectiveness Could be Improved*, GAO (February 2022).

particular, some market participants have noted that banks do not want to offer small-dollar products because they are expensive to develop, and the regulations or supervisory expectations may change. The GAO went on to note that from 2010 to 2020, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency issued or rescinded at least 19 actions related to small-dollar loans, leading to continued regulatory uncertainty.

Consumer demand still exists for a short-term loan product and, if allowed, highly regulated banks can make safe, affordable, and easy to access small-dollar loans to consumers in need.

The CFPB Fee Inquiry

Heavily shaping the current overdraft fee debate, on January 26, 2022, the CFPB issued a Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (RFI).⁷ In the RFI, the CFPB seeks public feedback regarding fees, calling out overdraft fees directly, that are not subject to competitive pricing to assist the CFPB in exercising its authority to create fairer, more transparent, and competitive consumer financial markets.

CBA has several concerns we would like to bring to the attention of the Subcommittee. First, fee amounts and disclosures are subject to numerous federal and state laws. Second, fees are a necessity that allows lenders to recoup operational costs, mitigate risk and can even deter repeated use by a customer. Finally, by characterizing various, disconnected charges as “junk

⁷ <https://www.lenderlawwatch.com/wp-content/uploads/sites/9/2022/02/CFPB-Junk-Fees.pdf>.

fees,” the RFI serves to confuse consumers and undercut the purpose and utility of disclosures that regulators have worked so hard to police and implement.

Federal and state agencies routinely monitor the adequacy of disclosures made to consumers about fees. The Bureau itself consistently engages in enforcement actions where it believes entities, including banks and other financial institutions, have failed to disclose properly the fees associated with any consumer product. Recently, the Bureau took enforcement action finding a financial services company “provided consumers with inaccurate or incomplete information about the fees it assessed.”⁸ The Bureau has been swift to act where it perceives problems, with the agency’s most important and effective enforcement actions coming in directed, targeted efforts to address the practices of individual bad actors, rather than overbroad generalizations that sweep the entire industry into its crosshairs.

Whether you are a bank or a box store, businesses remain in operation by the net revenues they receive by offering a product or service and charging a fee for those products and services. Banks and financial institutions are not the only place where consumers encounter fees. The federal government regularly charges fees as a penalty or to mitigate costs. A late payment to the IRS triggers a fee, a parking ticket results in a fee, even state and local governments charge fees for a variety of services. As the Curinos study showed, many consumers are willing to incur a fee for the ability to use overdraft products when making purchase decisions. Bank fees are highly disclosed and, as previously mentioned, in the case of

⁸ See *In the Matter of JPay, LLC*, File No. 2021-CFPB-0006 (Oct. 19, 2021); <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

overdraft there is an “opt in” requirement that the customer must choose. An increasing number of consumers look to disclosures to better understand how fees are applied and, in some cases, how to make fees work for them as a daily function of their financial decisions.

Congress charged the Bureau with enforcing federal consumer law consistently, “in order to promote fair competition.”⁹ With individual financial institutions disclosing, fully and completely, what their fee practices entail, consumers can make informed choices. The Bureau itself provides information designed to help consumers understand overdraft fees and comparison shop between different financial institutions.¹⁰

Conclusion

Banks provide access to safe, well regulated, high-quality consumer products and services, and have invested significant resources toward innovating overdraft services for consumers’ long-term benefit. We encourage policymakers to work with all stakeholders to avoid any unnecessary restraint on bank products or services by carefully considering all the options available that could impede the ability of those most in need of the tools they need to address their financial needs. CBA appreciates the opportunity to provide our thoughts to the Subcommittee and we remain eager to work with you on our shared commitment to improve financial opportunities for all Americans.

⁹ 12 U.S.C. § 5511(b)(4).

¹⁰ See “Comparing overdraft fees and policies across banks,” by Rebecca Borné and Amy Zirkle (Feb. 10, 2022); <https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/>.

Appendix A: Curinos 2021 Overdraft study, “Competition Drives Overdraft Disruption”

Appendix B: Bank Overdraft Innovations

APPENDIX A

State of Overdraft

Evolving Consumer Preferences Are Driving Competition and Innovation Across the Industry

Key Insights

Consumers understand and value overdraft

- + A majority of consumers see benefit in overdraft, specifically as an emergency safety net to cover rent/ mortgage, utility payments, groceries and medicine.
- + Nearly two-thirds of consumers indicated triggering an overdraft payment was a conscious choice.
- + While consumers favor some proposed regulations limiting the cost of overdraft, **62% say they would reconsider support if the rules limited access to overdraft.**

Overdraft use continues to decrease

- + Frequent overdraft use fell by **40% to 4.9%** between 2014 and 2020.
- + Bank-led initiatives aimed to help consumers avoid an unintended fee have dramatically reduced the number of small purchases tied to overdraft.

Competitive marketplace spurs innovation

- + Consumers increasingly choose financial institutions based on product offerings and perceive financial institutions that have innovated on overdraft as more desirable.
- + Since 2008, as a result of bank innovations, overdraft fees, per U.S. adult, have declined by **77%**, or \$158, and now seem to cover larger — and potentially more important — purchases.
- + Consumers were **more likely to open new accounts or increase their checking account activity** with banks offering overdraft innovations.
- + Traditional banks and fintechs offering consumer-friendly overdraft and overdraft alternatives have experienced a 40% improvement in account acquisition since 2017, compared to a decline of almost 30% for non-innovators.
- + Competition will drive financial institutions to address gaps in their product suite so they can provide short-term credit alternatives to customers.

REPORT PRESENTED BY

curinos

✉ Press Inquiries | Zachary Allegretti III | curinos@jconnelly.com

🌐 curinos.com

APPENDIX B

Overdraft Innovations

FROM AMERICA'S LEADING BANKS



Over the past year, a growing number of banks have unveiled new innovations designed to avoid overdraft fees or have an overdraft product with features selected by the consumer. Strategic technological investments have ensured banks are well-equipped to incorporate many of these features through digital platforms, further empowering consumers with the tools they desire to make informed financial decisions.



Ally Financial

Previously announced it would eliminate overdraft fees altogether, and unveiled CoverDraft, a new tool to provide customers additional short-term liquidity as an alternative to traditional overdraft.



Bank of America

Eliminated overdraft for consumer clients when using debit cards at the point of sale and ATM, eliminated overdraft protection transfer fees, eliminated courtesy overdraft and non-sufficient funds fees, and reduced all other overdraft fees to \$10.



Capital One

Announced it will completely eliminate all overdraft fees and non-sufficient fund (NSF) fees for its consumer banking customers, while continuing to provide free overdraft protection.



JPMorgan Chase

Expanded the overdraft cushion to \$50 and eliminated the Returned Item Fee. Beginning next year, the bank will provide an additional day to settle outstanding balances and will expand early direct deposit access to all customers.



Citi

Announced it will eliminate overdraft fees altogether, and will continue to cover overdraft protections through two services: Safety Check and Checking Plus.



Citizens Bank

Introduced Citizens Peace Of Mind, a new deposit feature added to all checking accounts in October aimed to provide customers with the ability to avoid the expense of unexpected overdraft fees.



Fifth Third Bank

Now offers low-cost deposit accounts, Early Pay direct deposit and the Momentum Banking account which affords extra time to make deposits, including advance funds up to \$50 against future direct deposits.



Frost Bank

Customers are automatically enrolled in the overdraft grace feature, offering no-fee overdrafts up to \$100.



Hancock Whitney Bank

Hancock Whitney announced plans to eliminate consumer non-sufficient funds fees as well as certain overdraft fees. Additionally increasing existing overdraft balance threshold before fees are assessed.



Huntington Bank

Huntington launched Standby Cash, a line of credit giving eligible customers immediate access up to \$1,000 with no interest or fees if customers sign up for automatic payments.



M&T Bank

Announced plans to cut overdraft fees in half while also eliminating nonsufficient fund fees, and any charges customers pay when they transfer money from a linked deposit account to avoid an overdraft.



PNC

Introduced Low Cash Mode to help customers avoid overdraft fees through account transparency and control to manage low-cash moments or mis-timed payments.



Regions

Customers benefit from Regions Now Checking, providing a flat \$5 monthly fee to avoid any overdraft or non-sufficient funds fees, and will eliminate overdraft protection transfer fees.



Santander

Raises the no-fee overdraft threshold to \$100 for every Santander Bank client. Also eliminated the overdraft protection transfer fee (previous \$12) and reduced the daily overdraft fee cap from six to three.



TD Bank

Introduced TD Essential Banking, a low-cost, no-overdraft-fee deposit account. TD will also eliminate fees for overdrafts of \$50 or less and give customers 24 hours to fix the issue before incurring a fee.



Truist

Introduced new personal checking accounts with no overdraft fees and an innovative deposit-based line of credit. Discontinuing returned item, negative account balance, and overdraft protection transfer fees for all existing personal accounts.



U.S. Bank

Ended non-sufficient fund fees for checking accounts. Also increased the amount an account can be overdrawn from \$5 to \$50 before a fee is charged. Customers will now have a full day to deposit funds to avoid overdraft fees.



Wells Fargo

Eliminated transfer fees for Overdraft Protection and NSF fees for checks and electronic transfers, added a grace period for overdraft repayment, and provided early access to direct deposits and access to a new short-term credit product.