

March 30, 2022

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

Dear Director Chopra:

On January 26, 2022, the Consumer Financial Protection Bureau (CFPB) launched an effort to solicit public comment on consumer financial fees.<sup>1</sup> The stated goal of the Request for Information (RFI) was the CFPB “exercising its enforcement, supervision, regulatory, and other authorities” to address concerns you represent the CFPB has received. For example, the CFPB alluded to hidden or exploitative fees and asked the public to comment on respective experiences with fees linked to deposit accounts, credit cards, remittances and payments, prepaid accounts, and mortgage and other loan types.

We agree consumer education and simplification of disclosures should be a priority. There is, however, always a cost associated with providing financial services and access to credit. These costs include the risk to the offering firm for such product and credit extensions, which may be offset in part by certain fees for service. Moreover, there are statutory and regulatory requirements in place that guide financial institutions in how to properly communicate these costs, including the Truth In Lending Act (TILA) disclosure requirements and fee disclosures promulgated by the CFPB.

Furthermore, the CFPB broadly groups all fees associated with consumer products and services as “junk fees” and does not provide any legal definition of the term or any statutory authority to define such a term. The CFPB gives examples of the types of fees on which they are soliciting information including “unexpected fees” and “fees that seemed too high.” However, the CFPB fails to outline any illegal activity taking place regarding fees by financial institutions that would require the CFPB “exercising its enforcement, supervision, regulatory, and other authorities.”

In addition to the RFI, on December 1, 2021, the CFPB published two data sets regarding financial institution revenue related to overdraft and non-sufficient funds (NSF) fees and titled the release of these data sets “CFPB shows banks deep dependence on overdraft fees.”<sup>2</sup> However, closer examination of the data shows the CFPB is sowing a false narrative. One data set titled *Overdraft/NSF Fee Reliance since 2015 – Evidence from bank Call Reports* shows bank revenue from overdraft and NSF fees in 2019 was roughly \$15.47 billion. However, the CFPB failed to

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<sup>1</sup> <https://www.federalregister.gov/documents/2022/02/02/2022-02071/request-for-information-regarding-fees-imposed-by-providers-of-consumer-financial-products-or>.

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/>.

mention total bank revenue for 2019 was \$540 billion,<sup>3</sup> and these fees only represent 2 percent of all bank revenue. This data directly contradicts the CFPB’s claims that banks are “deeply dependent” on overdraft fees.

The second data set, titled *Checking Account Overdraft at Financial Institutions Served by Core Processors*, highlights data from 2014 – more than 7 years ago. This data set fails to take into account new innovations in overdraft, such as grace periods, posting alerts, and overall increase in availability and use of online banking. This data set is a failed representation of these financial products and the fees associated with them.

Overdraft protection is a short-term liquidity product that can aid consumers in making ends meet when a deposit account balance is low, particularly for those consumers who are unable to qualify for traditional credit products. A recent study indicates most consumers are well aware of the cost associated with tapping into overdraft coverage and choose to use this low-cost option to cover temporary funding shortfalls.<sup>4</sup> Some financial institutions will derive a higher percentage of revenue from deposit account related fees, such as overdraft or NSF, based on their business models and product offerings. Moreover, in December 2021, Acting Comptroller Hsu outlined potential reforms while cautioning that “limiting overdrafts may limit the financial capacity for those who need it most.”<sup>5</sup>

It is a known fact that smaller financial institutions are struggling to survive and compete in a complex regulatory environment, particularly in the midst of constant technological advancements. Democrats further harmed the viability prospects of community financial institutions by overturning the Office of the Comptroller of the Currency’s 2020 True Lender Rule<sup>6</sup>. This action created legal uncertainty for partnerships between community financial institutions and financial technology (fintech) firms. These partnerships have proven to foster innovation, increase capability, and promote competition in the financial services industry. Consumers ultimately benefit from these partnerships.

Given these efforts to weaken the financial system, we request that you provide answers to the following questions:

1. In the case of credit products designed to reach low- and moderate-income consumers and consumers with difficult credit histories, how does the CFPB expect financial institutions to bear the cost and offset the risk of these products in a safe and sound manner without fee assessment?
2. If offering such products ceases to make financial sense for financial institutions, does the CFPB expect these products to be discontinued? In this event, how does the CFPB propose that low- and moderate-income consumers and consumers with difficult credit histories seek extensions of credit?

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<sup>3</sup> <https://fred.stlouisfed.org/series/REVEF52211ALLEST>.

<sup>4</sup> <https://curinos.com/insights/competition-drives-overdraft-disruption/>.

<sup>5</sup> <https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-129.html>.

<sup>6</sup> <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-139.html>.

3. Has the CFPB taken into consideration the impact on consumer financial inclusion and choice if overdraft protection is removed as an option for consumers? If so, what were those considerations?
4. Has the CFPB considered where consumers will turn to help meet their short-term liquidity needs if overdraft protection and similar products are discontinued? If so, where?
5. Has the CFPB consulted with the prudential regulatory agencies concerning the risks to safety and soundness of limiting fees or attempting to set pricing?
6. What analysis has the CFPB independently performed regarding the safety and soundness effects of discontinuing or limiting the assessment of fees for the financial products and services specified in the RFI?
7. What current specific regulations and guidance does the CFPB intend to review in relation to this RFI?
8. How does the CFPB distinguish between legitimate fees, such as fees that cover cost of service provided or penalty fees, and “junk fees”?
9. How will the CFPB measure the success of any proposed regulatory changes? Does the CFPB take into account any specific metrics regarding transparency or industry competition? If so, which metrics does the CFPB consider?
10. Please define the term “junk fee?” Where does the CFPB receive statutory authority to create the term “junk fee?”
11. Of the examples the CFPB cites as a “junk fee” in the January 26, 2022 press release and the RFI, are any of these practices illegal? Specifically, are “fees for things a consumer believed were covered by the baseline price of a product or service, unexpected fees for a product or service, fees that seemed too high for the purported service, fees where it was unclear why they were charged” illegal?
12. To demonstrate if fees associated with the products mentioned by the CFPB are inappropriate, please notify us of the revenue of the following industries each year over the past five years and the total amount of fees collected by the following products each year over the past five years: deposit accounts, credit cards, remittances and payments, prepaid accounts, mortgages, student loans, auto loans, installment loans, and payday loans.
13. To determine if a consumer receives appropriate disclosure of the fees associated with financial products, please outline current disclosure requirements for the fees associated with the following products: deposit accounts, credit cards, remittances and payments, prepaid accounts, mortgages, student loans, auto loans, installment loans, and payday loans.

A key feature of the U.S. financial system is its wide range of institutions with varied business models and offering a broad selection of products and services to consumers. Any attempts by the CFPB or other financial regulators to stifle financial inclusion or consumer choice

or undermine the safety and soundness of particular financial institutions or the financial system as a whole would be imprudent.

We would appreciate written responses no later than April 15, 2022. This will ensure Committee Republicans are able to seek additional details during your upcoming semi-annual testimony requirement before the Committee. If you have any questions, please do not hesitate to contact Kathleen Palmer, Minority Staff, at [Kathleen.Palmer@mail.house.gov](mailto:Kathleen.Palmer@mail.house.gov).

Sincerely,



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Patrick McHenry  
Ranking Member



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Blaine Luetkemeyer  
Ranking Member on the  
Subcommittee on Consumer  
Protection and Financial  
Institutions



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Ann Wagner  
Vice Ranking Member



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Pete Sessions  
Committee on Financial Services



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Bill Posey  
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Bill Huizenga  
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Trey Hollingsworth  
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John Rose  
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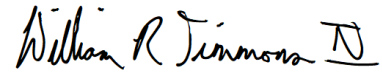
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Bryan Steil  
Committee on Financial Services



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Lance Gooden  
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Van Taylor  
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