April 1, 2024

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

RE: Docket No. CFPB-2024-0002

To Whom It May Concern:

I write in response to the January 17, 2024, proposed rule by the Consumer Financial Protection Bureau (CFPB) that would amend Regulation E and Regulation Z to update regulatory exceptions for overdraft credit provided by large financial institutions. Congress enacted the Truth in Lending Act (TILA) in 1968 which required banks to disclose loan terms in simple, standardized terms. A year later the Federal Reserve Board voted to create an exemption for overdraft services, so it was not subject to credit regulations. When this exemption was made overdrafts were significantly less frequent, greater services were required as individuals were writing checks, and average transactions causing overdraft were much larger.[1] Charging these fees to consumers, particularly at the current rate averaging $35, is an outdated and punitive practice given advances in digital banking options and the minimal costs those digital tools impose on large financial institutions.

NALCAB, the National Association for Latino Community Asset Builders, is a U.S. Treasury-certified Community Development Financial Institution (CDFI) that represents and serves over 200 diverse nonprofit community development and asset-building organizations across the country. Approximately one third of our members are certified CDFIs. Our members uplift Latino communities by strengthening access to quality affordable housing, safe financial products, and successful entrepreneurship. Many of the people served by the NALCAB Network are low- to moderate-income (LMI) individuals who are first- or second-generation immigrants.

To promote a fair, safe, and vibrant financial services marketplace for our underserved communities NALCAB provides grants, and technical assistance to help nonprofit organizations implement or expand the integration of financial capability services into asset building programs. We also create peer to peer connections within our network to share knowledge, best practices and lessons learned. Additionally, with the start of each Congress NALCAB releases a Latino Economic Policy Agenda which includes comprehensive proposals to boost the economic mobility of Latinos of which the CFPB's efforts on behalf of consumers across the country are key.

[1] https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf

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NALCAB submits our comments in support of the CFPB proposed rule on *Overdraft Lending: Very Large Financial Institutions*. Through working with our Latino and low-income communities we know the negative impact these excessive and inflated fees have on the financial well-being and economic mobility of those we serve. As LMI households are nearly twice as likely as higher-income households to overdraw an account, and Latino households are far more likely than White households to report having overdrawn an account.[2] These fees exacerbate financial hardships and perpetuate cycles of debt for individuals seeking to access and utilize banking services.

The proposed rule applies to institutions with over $10 billion in assets - approximately 175 of the largest banks - and prevents these lenders from inflicting inflated fees that further push people out of the banking system and exacerbate wealth disparities. We applaud the banks including Bank of America, Capital One, Citi and Ally for proactively eliminating or significantly reducing these fees. The CFPB's proposed rule makes it so that highly profitable overdraft loans are not exempt from TILA and other consumer protection laws. We applaud the CFPB for taking important steps in uplifting the financial security and well-being of our Latino and low-income communities.

Overdraft Benchmark

The proposed rule would limit the overdraft fee financial institutions may charge, ranging from $3 to $14, to ensure this service is provided at or below costs and losses as a true courtesy to consumers. While some costs associated with these transactions must be covered by banks, in the digital banking age those costs are negligible, and some banks have already shown that they can continue to provide overdraft coverage without charging any fees. Furthermore, evidence shows that charging high fees such as the common $35 fee does not deter overdrafts. Instead, these fees enter low-income individuals into a cycle of consistent overdrafts, worsen the income-expense gap they face, and give banks a profit incentive to push people into over-drafting.[3] This cycle is clear in the data, as consumers who incur multiple overdraft fees make up 9% of people who overdraft but account for 80% of all overdraft fees.[4]

NALCAB supports a benchmark that enables banks to cover necessary expenses, but these fees should not create profit revenue as we saw in 2019 when these feels generated $15 billion. Further, in the case of outliers where these expenses are particularly high, the CFPB has proposed the "breakeven" fee allowing banks to calculate their own costs and losses to produce the lowest possible fee to "breakeven". The CFPB must maintain strict oversight of the proposed "breakeven" fee to ensure banks do not exploit the ability to make their own calculations that may be inflated, punitive and unreasonable.

2 https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/

3 https://www.brookings.edu/articles/getting-over-overdraft/

4 https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf

Transparency in Lending, Options for Consumers

We commend the CFPB for not only working to lower fees, but to also expand overdraft protection options and transparency for consumers. With the CFPB's changes large financial firms will have the flexibility to offer overdraft as a courtesy service or as a line of credit. While ensuring fees only cover costs, the proposal still enables consumers to choose which transactions they have covered by these courtesy services. When banks go beyond the courtesy service and instead offer loans in conjunction with debit card transactions, they will be required to follow increased transparency requirements consistent with those that apply to credit card transactions. Namely, financial institutions would be required to disclose the APR (Annual Percentage Rate). As mentioned, the typical overdraft charge is $35 despite the fact that most consumers' debit card overdrafts are for less than $26 and are repaid within 3 days—APR terms of over 16,000%. By eliminating the profit motive to charge overdraft fees and increasing transparency the proposed rule will help stop abusive practices that put banks at odds with their customers' financial health and increase trust in large banks.

Further banks must assess the ability of consumers to repay so people are not offered debt they cannot afford. Additionally, this rule requires these lenders to consistently share bank statements, provide flexibility for repayment, and limit fees based on the line of credit to prevent an account from being depleted by fees. The proposal would enable consumers to have a clear understanding of the fees associated with products and services they seek, and greater control over when these fees are incurred.

Conclusion

NALCAB applauds this important step by the CFPB in curtailing the use of overdraft fees and protecting consumers who have seen the number and cost of these fees steadily incline. This proposed regulation is a critical starting point as the largest banks charge over two-thirds of overdraft fees.[5] We look forward to our continued partnership with the Biden-Harris administration and the CFPB in helping promote a financial services marketplace that works for all consumers.

Sincerely,

Oscar Marroquin, Public Policy Analyst

[5] https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_fact-sheet_2024-01.pdf

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