



April 1, 2024

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

RE: Overdraft Lending: Very Large Financial Institutions  
(RIN 3170-AA42)

Dear Director Chopra,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("Bureau's") proposed rule on Overdraft Lending: Very Large Financial Institutions, such as credit unions with more than \$10 billion in assets. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 4.9 million consumer members. The Association has developed these comments in consultation with our members.

### **The Association's High-Level Comments**

- The Association does not support the Bureau's proposal to regulate overdraft fees pursuant to the Truth in Lending Act (Regulation Z). While this proposal would only apply to "very large" credit unions (i.e. those with more than \$10 billion in assets), the Bureau states that it may expand this approach to apply to all credit unions. This proposal is inappropriate for all credit unions, including "very large" ones, and would disadvantage credit union members.
- Credit union members desire access to overdraft protection, which is not underwritten as credit. Under current law, consumers must opt-in to receive overdraft coverage and fees must be clearly disclosed.
- The Association does not support the proposal to treat any overdraft fee as a "finance charge" under Regulation Z if it is "above breakeven" based on either the credit union's costs and losses or a benchmark set by the Bureau. If the Bureau does set a benchmark, it should be based on current market averages as well as adjusted for inflation.
- We also do not support eliminating the Regulation Z exemption for overdraft fees that do not exceed the non-sufficient funds (NSF) fee the institution would charge it if does not honor an overdraft. Eliminating this exemption would

disadvantage consumers since they would face the same or higher out-of-pocket costs without being able to pay their bills on time.

### **The Association's Detailed Comments**

The Association does not support the Bureau's proposed rule, which we believe is unnecessary and will disadvantage credit union members. We urge the Bureau to withdraw this proposal because Regulation E already requires consumers to opt-in to receive overdraft coverage, including disclosure of overdraft fees. 12 C.F.R. § 1005.17 ("Requirements for overdraft services"). The Bureau even publishes a Model Consent Form for Overdraft Services so that consumers have a clear pathway to opt-in to overdraft protection and are not misled about their rights concerning overdraft services. *See* 12 C.F.R. pt. 1005 app. A ("A-9 - Model Consent Form for Overdraft Services § 1005.17").

As the preamble to the Bureau's proposal notes, aggregate overdraft revenue in the financial services industry declined by more than half following adoption of the Regulation E opt-in requirement in 2010. These 2010 reforms were effective in curbing any abuses that may have existed prior to that time. No consumer today receives overdraft coverage or overdraft fees without having first opted-in to overdraft protection.

Credit union members also want access to overdraft services. In addition to Regulation E's opt-in requirement, as democratically controlled not-for-profit cooperatives, a credit union's members have the power to reduce or eliminate the overdraft fees through the credit union's governance process and, in many cases, credit unions have reworked their overdraft programs and fee structures to best serve their members and incentivize beneficial financial choices.

It is not surprising that credit union members choose to opt-in to overdraft coverage because it protects their interests. The consumer benefits when a payment is honored as an overdraft since the transaction goes through and the consumer can, for example, pay their rent on time and avoid late fees and possible eviction without the consumer needing to apply for credit, which they might not be approved for especially if they have poor credit or no credit history.

Overdraft protection often serves as a vital lifeline for lower-income consumers with irregular incomes or bad credit who can use overdraft coverage to bridge temporary cash shortfalls. This is especially important if they do not have access to traditional forms of credit or need funds quickly in order to make vital payments, like rent, which are highly time sensitive. The Bureau's presumption that consumers would receive credit cards and/or reserve lines of credit to replace overdraft protection is not warranted with respect to consumers who have irregular or undocumented income, such from the informal economy, or who have low credit scores because they have limited credit histories or have not used credit wisely in the past. Prudential safety and soundness regulations require credit unions to follow their credit unwriting policies and procedures—including minimum credit scores and debt-to-income

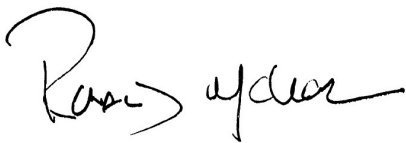
ratios, income documentation requirements, etc.—for all extensions of credit under Regulation Z.

The alternative is for the consumer to pay an NSF fee that is usually equivalent to an overdraft fee, but without the benefit of the consumer's transaction being honored. Pushing financial institutions to charge NSF fees for not honoring a transaction instead of charging an equivalent overdraft fee while honoring the transaction would disadvantage credit union members and other consumers since they would face the same or higher out-of-pocket costs without being able to pay their bills on time.

If the Bureau does finalize this rule, any benchmark for a Regulation Z exemption should be based on the market average of overdraft fees financial institutions already charge, such as the \$32.50 the Bureau's research indicates is average, as well as adjusted for inflation going forward. The benchmarks the Bureau proposes of \$3, \$6, \$7, and \$14 are significantly lower than current market rates. The Bureau also surprisingly calculated all four rates as "breakeven" based on estimated charge-offs and operational expenses despite the fact that the highest "breakeven" rate of \$14 per overdraft is more than four-and-a-half times greater than the lowest "breakeven" rate of \$3. The wide range of "breakeven" rates calls into question the Bureau's methodology.

We urge the Bureau to withdraw this proposal. Thank you for the opportunity to comment on the Bureau's proposed rule on Overdraft Lending: Very Large Financial Institutions. If you have any questions or desire further information, please do not hesitate to contact the Association at (508) 481-6755 or govaff-reg@ccua.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald McLean". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Ronald McLean  
President/CEO  
Cooperative Credit Union Association, Inc.  
rmclean@ccua.org