



February 29, 2024

Director Rohit Chopra
Consumer Financial Protection Bureau
2024 NPRM Overdraft
Legal Division Docket Manager
1700 G Street NW
Washington, DC 20552

Re: RIN 3170-AA42 Overdraft Lending: Very Large Financial Institutions

Dear Director Chopra,

Thank you for the opportunity to comment on the above-captioned Proposed Rule entitled “Overdraft Lending: Very Large Financial Institutions” (Proposed Rule). Arizona Financial Credit Union (AFCU) is a state-chartered, federally-insured credit union with approximately \$3.3 billion in assets that serves approximately 165,000 members. As all credit unions, we are a group of members serving members. We have existed since 1936 during the Great Depression, when the Federal Credit Union Act was first approved to enable people to help one another by pooling their funds and offering low-cost loans to each other. These same principles guide our credit union today. The members of AFCU along with other credit union members have been negatively affected by the CFPB’s focus on overdraft fees and resulting bombardment of abusive class action lawsuits. Accordingly, we respectfully request that the CFPB abandon its Proposed Rule.

In the aftermath of the 2007-09 “Great Recession”, it was widely reported at that time that many people lost their whole life savings because of the residual stock market crash, massive job cuts, and declining home values, among other cascading effects of the collapse of the financial markets. Many of these people wanted to escape what they viewed as greed on Wall Street, in which big banks escaped government oversight of predatory lending and financial regulation. Many people turned to credit unions – member owned financial institutions -- where people could feel some control over their financial well-being and recovery. Credit Union members could then attend member meetings, vote on such matters as the election of the board of directors, and even run for a seat on the board of directors or supervisory committee themselves. When the CFPB was created as a legislative response to the financial crisis in order to protect consumers in the financial marketplace, members of credit unions everywhere were thrilled, thinking finally we have a single agency devoted to enforcing federal consumer financial laws.



However, the CFPB's intense focus on overdraft fees has hurt the very consumers the agency was created to protect, namely the approximately 153 million people who are members of credit unions. Let's not forget that it is the members who vote on the board of directors to represent their interests at the credit unions – members serving members. Fees are carefully determined by the executive team, who themselves are members, who then present their recommendation to the board for approval. The executive team takes into consideration a number of factors to determine such fees. It is not the role of the CFPB to establish caps based on what it believes is the universal cost of providing the overdraft services. Most importantly, the CFPB is not taking into account that the "cost" includes the unfortunate reality that many members who rely on overdraft services are often the members who close accounts and cause a loss to the credit union in the form of negative balances. Who pays for these losses? It's the rest of the membership – individuals and financial **consumers** – who pay for these losses in the form of decreased ownership payouts at the end of the year, decreased dividends, and increased interest rates.

Overdraft fees are carefully contemplated by credit union management in fairness to all members and disclosed to members. The members decide if they want the overdraft service or not. For some, if they did not have this service, their charges would be declined, transactions would not be processed, NSF fees would result for bounced checks, and credit would be negatively affected. Members are under no obligation to sign up for overdraft services, this is their choice. If the CFPB caps fees because of its own assessment as to what it believes is the cost of offering the service, said cap will result in credit unions discontinuing the service. We have discussed doing so at our own credit union, if the Proposed Rule becomes final. The vast majority of members would have to turn to payday lenders, thereby incurring substantially higher fees than they would for overdraft services, because many of them would not qualify for traditional loans. This would belie the CFPB's goal as stated in the Proposed Rule to "allow consumers to better comparison shop across credit products". Indeed, consumers have the ability to comparison shop now, by simply comparing overdraft fees imposed by different institutions, along with the other services offered, to determine which offerings best align with their particular needs.

To illustrate this point more fully, our credit union offers an overdraft limit of up to \$3500 based on the following criteria: rolling 33-day account history, length of time an account has been open, average number of deposits, dollar amount of deposits, deposit patterns, accounts in "good standing", and timely repayment of overdrafts. Many members who have succumbed to difficult times, including elderly social security members, rely on this program to survive. Some people opt to take advantage of the full overdraft limit possible – \$3500 for those who qualify – and may use their debit card to obtain a cash advance up to the amount of their limit. This is essentially a no-questions-asked, no credit-qualifying loan, which AFCU reports as such on all reports including call reports. For this lump sum that members borrow, our credit union charges one fee total of \$35. This is one simple fee with no interest charged. Again, many of these people would not qualify for any other type of loan, besides payday loans, and many who find themselves in emergency financial situations do not have the time it would take to apply and be approved for another type of loan anyway. In comparison to this low-cost \$35 overdraft fee, payday loans "might range from \$10 to \$30 for every \$100 borrowed...equating to an



annual percentage rate of almost 400% for a two-week loan” according to the CFPB’s August 28, 2020 piece entitled, “What are the costs and fees for a payday loan?” At AFCU, a member taking a cash advance of \$3500 utilizing our overdraft service would incur a fee of \$35 or 1%. There are members who do abuse this service and cause a loss to the credit union, which as stated previously is a cost to credit unions that the CFPB has not taken into account.

Additionally and very importantly, one of the major unintended consequences of the CFPB’s focus on overdraft fees, is the impetus it has provided to class action attorneys to ruthlessly target and harass credit unions. In these class action complaints, plaintiffs often quote the CFPB’s own language on overdraft fees, setting forth the “horrible abuse” credit unions commit against its members for charging overdraft fees, thereby creating the impression to the courts they they are simply furthering the CFPB’s good work. We would encourage the CFPB to research what is happening in this class action space to credit unions. It goes something like this – one of a handful of known class action attorneys solicit plaintiffs on websites they set up (plaintiffs don’t go looking for class action attorneys, it’s the other way around) and once they have a named plaintiff, they then have the initial pieces in place to bring a class action lawsuit. The same recurring theme arises at every credit union attorneys’ conference – credit unions being hit with frivolous class action lawsuits regarding overdraft fees, often containing boiler plate language with incorrect facts. However, because credit unions are not in the business of litigation, but rather serving its members, and upon advice from their insurance companies, credit unions routinely settle these matters as the cost of doing so is less than fighting the lawsuit. The named plaintiff receives an agreed-upon amount, the class members receive a shockingly nominal payment, often under \$20, and the class action attorneys walk away with a gold mine.

Who pays for the settlement amount the credit union had to pay the class action attorneys? It’s the individual members. This is not what the CFPB wants to accomplish or what the Dodd-Frank Wall Street Reform and Consumer Protection Act contemplated when it created the CFPB. This is not justice for consumers, at least not in the credit union space.

In conclusion, we respectfully ask that the CFPB abandon plans to pursue this Proposed Rule, and instead designate some resources to investigating what its resulting position has done to foster class action abuse toward innocent credit union members – consumers -- in the overdraft space.

Sincerely,

Diane Hank

Diane Hank
General Counsel & Chief Compliance Officer