Indiana Credit Union League

The association of Indiana credit unions

April 1, 2024

Comment Intake 2024 NPRM Overdraft
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Comment Letter - Overdraft Lending: Very Large Financial Institutions (Docket No. CFPB–2024–0002)

To Whom It May Concern:

The Indiana Credit Union League (League) appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its proposed rule to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by "very large" financial institutions. The ICUL member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.8 million consumers.

The ICUL strongly opposes this proposed rule, and we urge the CFPB to rescind it and work toward other solutions to educate consumers and empower community financial institutions, like credit unions, to continue offering valuable, affordable financial products and services. If adopted, we believe the proposed rule would effectively cut off critical revenue that credit unions need to serve their members and communities. While the proposed rule ostensibly applies only to "very large" financial institutions, every expectation is that the new requirements would ultimately place enormous marketplace pressure on supposedly exempt institutions, like most credit unions, that would feel the impact of the proposed rule. We believe that this is the objective of the CFPB in as much as the proposed rule states that the CFPB plans to monitor the market's response before determining whether it should apply the changes to institutions below $10 billion in assets. This proposed rule would negatively impact credit unions of all sizes.

Overdraft Protection Is Being Mischaracterized

Overdraft fees are well disclosed, voluntarily chosen services fees charged by financial institutions for providing a service from which consumers derive a tremendous benefit. Overdraft programs are highly valued by consumers for their ability to help them effectively manage their finances and often protect consumers from other fees and negative consequences tied to declined transactions. By covering account shortfalls, individuals are often spared from NSF fees charged by retailers as well as potentially harmful impacts on credit scores. Consumers understand the value of overdraft programs and affirmatively opt-in to these services and know what the fees will be. The CFPB's continual rhetorical assault on overdraft and other reasonable financial services fees as "junk fees" is unreasonable and undermines the meaningful dialog that is supposed to take place in a federal agency rulemaking process.

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The CFPB and others routinely assert that overdraft programs are solely revenue-generating offerings that take advantage of vulnerable consumers. This is not the experience with credit unions and their members. As member-owned, member-directed cooperative financial institutions, credit unions' focus is on providing members with the financial products and services they need to achieve their own financial well-being. The League has gathered significant information from Indiana credit unions about their overdraft programs and has learned much that runs counter to the CFPB's negative rhetoric.

- Information received from several credit unions indicates that higher income individuals make up a significant majority of those who regularly use overdraft programs. One credit union reported that the vast majority of accountholders who opt-in to the program make well over $100,000 per year and that the largest growth in the program was among accountholders making more than $144,000 per year. The credit union also noted that 81 percent of new accountholders opt-in to have the service available, but only 2 percent of accountholders utilize the service.
- Many credit unions reported that they frequently refund fees as well as waive fees for small dollar transactions ($10-$20).
- Many credit unions offer financial literacy programs along with overdraft programs and most do extra outreach to members who utilize overdraft programs frequently to help them find ways to minimize overdrafts.
- Indiana credit unions offering overdraft programs report strong member satisfaction with the programs and an expectation that overdraft programs will be available to help them manage their finances. They offered many member stories about the benefits of overdraft programs including covering utility payments, medical bills, rent to avoid much higher daily late fees, new tires to be able to get to work, and for many other basic necessities of life as well as to avoid going to a payday lender.

Credit union overdraft programs are well-disclosed, member-selected, and reasonably priced services that are highly valued by members who utilize them. We do not believe that the CFPB's "junk fees" rhetoric and this proposed rule acknowledge or recognize this, and we urge the CFPB to reconsider its approach.

The Proposed Rule Is Impractical

Beyond our override concerns with the basic approach to overdraft programs, we believe that the mechanics of the proposed rule are impractical. The proposed rule essentially provides covered institutions with three options related to overdraft programs - offer overdraft services at a "break even" cost; offer them under a new interpretation of the Truth in Lending Act (TILA) and CARD Act that would make them loan products; or not offer overdraft programs at all. The first two options are not practical for credit unions and the last option is a disservice to consumers who clearly value overdraft programs.

First, we believe that it is beyond the purview of the CFPB to determine the appropriate profitability of a financial product or service. Requiring an institution to charge an overdraft fee that does no more than break even to the incremental cost of providing the service and recoup losses is not practical or equitable because it does not allow for the broader expenses that go into offering financial products and services that must be covered by income. Every product or service that is offered by a credit union creates costs, and not all products and services generate revenue. For overdraft programs, the costs take the form of call centers, branch servicing, collections, customer communications as well as a host of costs that the

CFPB would not allow covered institutions to recoup such as vendor services, compliance testing, technology, and the cost of checking accounts. Credit unions make pricing decisions across the full range of their products and services based on the individual circumstances of their environments and members' needs and it is beyond the scope of the CFPB's authority to dictate to institutions how those decisions are made by artificially determining that a service cannot be offered beyond a limited "break even" fee. Beyond that, the proposed rule contemplates setting a potential benchmark fee that can be used rather than an institution's own break-even fee. The League has serious concerns with the concept of a regulatory benchmark fee because we believe that there is no possibility of determining an appropriate fee that would work across all types of financial institutions of all sizes. It is deeply flawed to believe that a benchmark fee determined using data from the largest institutions in the marketplace would be appropriate for the smaller, community-focused institutions that would inevitably feel the impact of this proposed rule.

Next, the proposed rule provides that a covered institution could offer overdraft programs changing a fee above the break-even or benchmark fee but under the misguided approach that anything charged above that fee would be considered a finance charge under TILA and Regulation Z with overdrafts considered to be TILA-regulated loans. This approach misinterprets what "credit" is under TILA and creates a significant new regulatory burden on overdraft programs. Currently, Regulation Z has no interpretation that defines overdraft services as a form of credit. These services are provided at the discretion of the financial institution and the institution has the right to decline transactions that would overdraw the account. Therefore, overdraft protection does not give a consumer the option to defer payment of a debt in the method covered by the traditional definition of "credit" under TILA. If overdraft programs are required to be considered as loans under TILA and Regulation Z, the impact on the consumers who rely on them could be significant. Many consumers who rely on the occasional use of overdraft programs as a necessary safety net often do so because they do not have the creditworthiness required for traditional lines of credit or credit cards. Additionally, requiring the application of ability-to-pay standards associated with loans to overdraft programs likely would eliminate a significant group of consumers who currently choose to use overdraft programs. The ICUL is concerned that the unintended consequence of considering overdraft programs to be loan programs subject to TILA and Regulation Z would significantly reduce the availability of these programs and push consumers who would have no choice but to turn to alternatives like predatory payday lenders and check-cashing businesses creating a broader financial inclusion gap.

From the outset of the TILA more than 50 years ago and reiterated over the years in additional regulatory guidance, overdraft programs have not been considered to be loans subject to TILA and overdraft fees have not been considered to be finance charges. We strongly believe this continues to be the case and we oppose the CFPB's proposal to change this interpretation.

Conclusion

The Indiana Credit Union League strongly urges the CFPB to rescind this proposed rule and reconsider how it could better address its concerns about overdraft programs by working with credit unions and other community-focused institutions to continue to provide these highly valued programs with the appropriate consumer protections already in place under Regulation E (consumer notice and opt-in) and robust consumer financial literacy and outreach efforts already undertaken by credit unions. While this proposed rule is drafted to directly impact institutions with more than $10 billion in assets, we strongly

believe the consequences of imposing an arbitrary price control/benchmark measure as well as misinterpreting TILA and Regulation Z to expand them to overdraft programs will not only challenge those larger institutions but will inevitably impact most the credit unions that provide these core programs and their members who rely on them.

The League appreciates the opportunity to comment on the proposal and its potentially harmful effects on Indiana credit unions and the communities they serve in times of financial uncertainty. If you have any questions about our letter, please do not hesitate to give me a call at (317) 594-5320.

Sincerely,

John McKenzie, President
Indiana Credit Union League