

Congress of the United States
Washington, DC 20515

February 8th, 2023

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

Dear Director Chopra:

On January 4, 2023, the Consumer Financial Protection Bureau issued its Fall Rulemaking Agenda for 2022. Within this agenda, the Bureau included a rule on “Overdraft Fees” that is in the pre-rule stage of rulemaking.¹ In an abstract on the Rules, the Bureau stated it will examine the rules governing whether an overdraft fee is considered a finance charge under Regulation Z (Reg Z), which implements the Truth in Lending Act (TILA).²

Identifying overdraft fees as a finance charge is a significant and notable change for overdraft coverage products and defies over 50 years of consumer finance law. It would drastically limit, and in many cases outright prevent, the ability of financial institutions to provide emergency, short term liquidity to consumers who need it most. If the Bureau places overdraft products under Regulation Z, the difficulty placed on financial institutions to provide short term liquidity through overdraft cannot be overstated.

If the Bureau believes each overdraft fee is a finance charge, it must also consider each overdraft coverage an extension of credit under Reg Z. This would force financial institutions to know the exact moment when a consumer is overdrafting their account and simultaneously present them with a TILA disclosure form regarding the specific purchase being made by a consumer. Even if this was possible, the consumer would then have to fill out the appropriate TILA forms, send them back to the institution, and the institution would have to approve the extension of liquidity all before the consumer could make a purchase. The amount of red tape needed for a consumer to make an overdraft purchase – whether it is food for the week, diapers for their baby, or keeping their electricity on – would truly be astounding under this potential rule. Even if all these mechanisms were possible, the sheer impracticality would result in the elimination of overdraft protection for consumers.

Along with being impractical, forcing overdraft fees into the TILA disclosure matrix distorts the cost of these short-term liquidity products. One of the required disclosures under Reg Z is Annual Percentage Rate (APR). Using APR to describe the cost of any extension of credit or

¹https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPubId=202210&agencyCode=&showStage=active&agencyCd=3170

² <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3170-AA42>

emergency liquidity product that has a term of less than one year does not accurately depict the price of that product and misleads consumers. Furthermore, requiring financial institutions to determine the APR of an overdraft product, which does not have a specific, defined term length, places additional hurdles on financial institutions to meet the liquidity needs of consumer, which are dire.

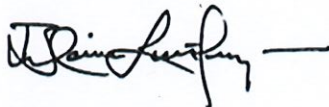
According to the Federal Reserve, “24 percent of adults indicated that they had, or were close to having, difficulty paying bills for that month: 14 percent of adults had one or more bills that they were unable to pay in full, and an additional 10 percent said they would have been unable to pay their bills if faced with a \$400 expense.”³ That’s roughly one in four American consumers with significant short term liquidity needs. The Bureau should not be exploring ways in which to eliminate options for these consumers and should instead seek to understand how these consumers use overdraft as a means of meeting their financial needs.

According to a study by global data intelligence firm Curinos, consumers make highly informed choices about when to use overdraft services based on account information and clear disclosures of fees and procedures.⁴ The study states that more than 60% of overdrafts come from consumers who intend to use the service and more than 80% of overdraft transactions come from consumers who opted into debit card overdraft programs with the clear intention of using it to cover their payments. In addition, the study shows the average size of an overdraft has increased from \$50 to \$200. This increase reflects how consumers are using overdraft to cover larger expenses they need in their day to day lives.

The bottom line is overdrafts are not and should not be included in Reg Z. Paying consumers’ occasional or inadvertent overdrafts is a long-established customer service provided by depository institutions. The Federal Reserve recognized this longstanding practice when it initially adopted Regulation Z in 1969, to implement the TILA. While there have been many innovations in overdraft over the past 50 years, one thing remains the same: including overdraft fees in Reg Z would force an impractical and impossible pricing and disclosure regime on financial institutions and ultimately eliminate the ability of consumers to access the liquidity they need to afford necessary goods and services.

We urge you to protect consumers by withdrawing the pre-rule on overdraft.

Sincerely,

A handwritten signature in black ink, appearing to read "Blaine Luetkemeyer", followed by a horizontal line.

Blaine Luetkemeyer
Member of Congress

³ Board of Governors of the Federal Reserve System: *Economic Well Being of U.S. Households in 2021* (May 2022) <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>

⁴ Curinos: *Competition Drives Overdraft Disruption* (December 1, 2021)



Andy Barr
Member of Congress



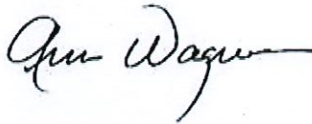
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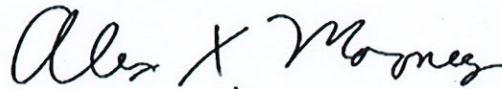
Bill Posey
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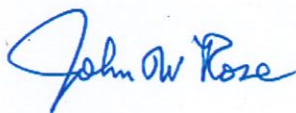
Roger Williams
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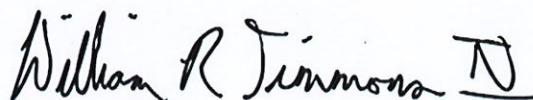
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