



April 1, 2024

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

Re: Overdraft Lending: Very Large Financial Institutions, Docket No. CFPB-2024-0002, RIN 3170-AA42

Filed electronically via: <https://www.regulations.gov>

Dear Director Chopra:

CrossState Credit Union Association (CrossState) appreciates the opportunity to share comments from our members on the proposed rule to amend both Regulations E and Z to regulate the amount of overdraft fees charged by the largest financial institutions with assets of \$10 billion or more.

CrossState is a regional trade association that advocates for nearly five hundred credit unions located in the State of New Jersey and Commonwealth of Pennsylvania. Credit unions were formed for the purpose of making credit available to Americans and promoting thrift through a national system of nonprofit, cooperative financial institutions. Credit unions are owned by their members and controlled by a volunteer board of directors elected by the membership of the credit union. Earnings of credit unions are returned to members through fewer and lower fees, higher yields on savings, and lower loan interest rates.

Currently under Regulation Z, charges for honoring checks that overdraw a checking account are not considered a finance charge if they are agreed to in writing. Because overdraft is not an extension of credit, the fees are excepted from the definition of a finance charge, and not regulated under Regulation Z. Due to this exception, credit unions have been able to provide their members with the ability to overdraw their accounts as an additional service. Members do not need approval for a line of credit and may avoid the embarrassment of experiencing a bounced check, or a decline using their debit card if they have opted into overdraft services with their financial institution.

Under this proposed rule, Regulation Z would apply to overdraft credit provided by the large financial institutions unless those financial institutions provide the service at or below costs and losses. If the service is not provided at or below costs, or does not use the benchmark fee, it is "above breakeven overdraft credit." The proposed rule would allow those financial institutions to determine whether an overdraft charge is considered above breakeven by either 1)

calculating its own costs and losses using standards set forth in the proposal; or 2) relying on a benchmark fee of either \$3, \$6, \$7, or \$14, as determined by the CFPB.

The proposed rule does not change the regulatory framework for overdraft credit offered by financial institutions with \$10 billion or less in assets. The CFPB states in the proposal that it will continue to monitor the market regarding smaller financial institutions. CrossState and its member credit unions oppose this rule for the reasons that follow.

While CrossState and its member credit unions appreciate that the rule only applies to the largest financial institutions, we are concerned that the rule will affect financial institutions of all sizes, including the smallest credit unions. Because the rule is written to be applicable to only the largest financial institutions, no small business review panel needed to be convened. We strongly encourage the CFPB not to proceed with this proposed rule until it studies the effects of the rule on smaller financial institutions.

The market for financial services has always been very competitive in terms of pricing of loans and depository services. It stands to reason if the largest competitors holding the largest share of available deposit funds lowers the amount of an overdraft fee, it will force others in the same market to lower or eliminate their fees for the same service in order to remain competitive.

The CFPB states in the proposal that it finds it "plausible that a different revenue model for checking in the U.S. that may result from the proposed rule will have broader implications on counterparties, competitors, or new entrants, or elsewhere in the economy."¹ The CFPB found that those considerations would be too speculative for this analysis. We believe that a more in-depth analysis of those impacts is necessary before finalizing the current rule. Those broader implications may have a substantial negative impact on smaller financial institutions and on consumers that rely on overdraft services.

The proposed rule could essentially eliminate overdraft services currently provided by credit unions. If credit unions need to lower the fee that they charge for the service, the costs of providing the service may make it unfeasible to continue. Many credit union members that may not qualify for a traditional overdraft line of credit rely on overdraft services to make it from paycheck to paycheck. We have heard from credit unions that their members are grateful to be able to pay a bill or buy groceries before payday, even if there might be a fee attached.

Larger banks may have the ability to make up a reduced fee income by charging higher interest rates for the overdraft lines of credit or other loans. Smaller financial institutions, including credit unions, may not be able to offset the reduced revenue with other services and increased rates.

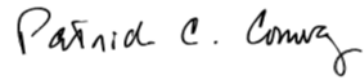
We urge the CFPB to delay implementing this proposed rule until after it has undertaken a more thorough analysis of the impacts of the rule on smaller financial institutions and consumers who use the services that it may eliminate. As the CFPB noted in the proposal, changes have been taking place in the marketplace without enacting a new rule. Many financial institutions have reduced or eliminated overdraft fees, have imposed daily limits, and have been providing additional education to their members to help them avoid incurring overdraft fees. These

¹ 89 FR 13852, 13895

changes may need time to have a measurable impact but should be given a chance to be studied.

Thank you for the opportunity to comment.

With best regards,

A handwritten signature in black ink that reads "Patrick C. Conway". The signature is written in a cursive, slightly slanted style.

Patrick C. Conway
President & CEO

cc: CrossState Board
CrossState Government Relations Committee
CrossState Regulatory Review Committee