America's Credit Unions

April 1, 2024

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

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

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the notice of proposed rulemaking (NPRM) issued by the Consumer Financial Protection Bureau (CFPB or Bureau) regarding its proposed rule to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by "very large" financial institutions. Credit unions represent just a small fraction of this segment, with the most recent call report data showing 21 credit unions with assets greater than $10 billion, and 160 banks that fall into that category.[1] America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

America's Credit Unions and its member credit unions appreciate the opportunity to provide input on the proposed rule and urge the CFPB to desist in its short-sighted campaign against the well-disclosed, well-regulated fees that heavily regulated and supervised financial institutions charge their consumers for the provision of a highly valued service. The CFPB does have an important role in regulating bad actors in the market. However, recent actions are serving to regulate certain products and services from the marketplace, irrespective of legality or consumer harm. The proposed rule, with its singular focus on overdraft, ignores the interconnected nature of financial products and services and would only serve to harm or eliminate programs that consumers benefit from. Furthermore, the proposed rule, in the guise of providing a benefit to consumers, would instead drastically reduce the ability of community-based credit unions to help their members in times of financial uncertainty and have widespread impacts on supposedly exempt credit unions and their members. The Bureau should rescind the proposed rule and focus its efforts not on setting market prices, an authority the Bureau does not have, but rather on educating consumers and empowering community financial institutions to provide valued financial products and services. Alternatively, as credit unions represent such a small proportion of covered institutions and yet the exempt institutions would still be so seriously impacted, the CFPB should use its exemption authority to exempt all credit unions.

[1] NCUA, "Quarterly Credit Union Data Summary" (Q4 2023).

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## Executive Summary

America's Credit Unions vehemently opposes the CFPB's proposed rule on overdraft fees, as it will harm community-based credit unions and their members.

- Overdraft protection services serve an essential role for consumers to manage their finances and credit unions are conscientious in working with members to ensure that these services are responsibly used.
- The proposed rule is impractical. Applying Truth in Lending Act (TILA) and Credit Card Accountability Responsibility and Disclosure (CARD) Act provisions to overdraft is not viable for credit unions, and reducing fees to a breakeven amount would force covered credit unions to remove crucial services, would tighten eligibility standards and remove access to overdraft for those who need it most, and would cause some financial institutions to remove overdraft protection altogether.
- The rule, despite its asset threshold, would nonetheless impact exempt institutions in much the same way as covered institutions, but with the thinner margins of smaller institutions, would lead to a higher incidence of removal of overdraft protection. This would have seriously detrimental impacts to credit unions through increased consolidation, reduced ability to serve underserved areas, and reduced relationship banking as well as removing the stepping-stone to financial inclusion that overdraft protection often represents.
- The proposed rule misinterprets TILA and impermissibly expands the definition of credit by categorizing above breakeven overdraft as a "finance charge."
- The rule's asset threshold is unprecedented and arbitrary and seems designed solely to sidestep the necessary Small Business Regulatory Enforcement Fairness Act (SBREFA) process.
- The rule smacks of a de facto price cap, in violation of Supreme Court precedent against illegal regulatory takings.

For all these reasons, the Bureau should rescind the rule or exempt all credit unions.

## General Comments

The Administrative Procedure Act was designed by Congress to ensure that all stakeholders, including consumers, industry players, and other interested parties, have a voice in the crafting of new regulations. The Bureau's public opposition to overdraft fees appears to preempt this process, signaling a policy decision that has already been made irrespective of the APA's procedural safeguards. Of note, is the Bureau's deceptive YouTube ad which lumps all overdraft fees with airline and ticket price fees.[2] If policy changes are perceived as foregone conclusions, it undermines the integrity of the rulemaking process and the trust of all stakeholders. If and how to regulate overdraft protection above and beyond current regulation is not a new issue, and

[2] CFPB "The hidden cost of junk fees" (Feb. 2, 2022) *available* at https://www.youtube.com/watch?v=RdKCldbaa5w.

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in fact has been discussed since the inception of the CFPB. Of particular debate was the discussion relative to specific regulation of fees.

In a 2016 Town Hall Meeting hosted by National Credit Union Administration (NCUA) Chairman Debbie Matz, then-CFPB Director Richard Cordray was asked whether the Bureau intended to limit non-sufficient funds (NSF) fees. He responded "I think we're actually pretty leery under our statute of trying to impose specific pricing mechanisms on institutions. We generally think that's not the right approach for us or one that Congress intended or would've expected…"[3] That response was one we agreed with then and now, and despite a relentless crusade against fees in the intervening years, the Bureau still lacks the authority to set pricing mechanisms on financial institutions.

Overdraft fees are service fees. They are fees charged by financial institutions for the provision of a beneficial service, and the Bureau's characterization of them as "junk fees" is inaccurate and counterproductive to the relationship banking that it seeks to promote. Overdraft protection programs serve as a critical financial safety net for many Americans, and they are immensely valued by consumers for their ability to help them effectively manage their finances. They are so valued in fact, that a Morning Consult survey last year found that for the fourth year in a row, 9 in 10 consumers found their bank's overdraft protection valuable, and nearly 8 in 10 consumers who have paid an overdraft fee in the past year were glad their bank covered their overdraft payment, rather than returning or declining payment.[4]

These programs are designed to help individuals avoid the occasional inconvenience or, more rarely but certainly more crucially, the catastrophe of declined transactions, ensuring that payments for essential services and unexpected expenses can be covered even when account balances fall short. And although many credit union members enroll in overdraft programs, far fewer regularly rely on them, as is the case with any lifeline. A recent America's Credit Unions survey found that the median percentage of credit union member enrollment for respondents was 50 percent, but that median percent of members who had actually used overdraft protection in the past 12 months fell to just 10 percent.[5] The ability to provide overdraft protection is especially important for members living paycheck to paycheck, for whom a small overdraft can prevent a cascade of financial hardships, such as utility shutoffs, eviction, or the inability to purchase essential goods. Absent the financial lifeline that overdraft represents, these crucial transactions would be declined, sparking impacts that can dwarf the relatively minor cost of a single overdraft fee. The convenience of being able to complete transactions without the worry of declined payments adds a layer of security to financial management that is difficult to quantify. Furthermore, overdraft protection shields consumers from potential fees and penalties

[3] NCUA Chairman's Town Hall Meeting with CFPB Director Cordray, (Feb. 9, 2016) *available at* https://web.archive.org/web/20160412163218/https:/www.ncua.gov/newsroom/Pages/news-2016-march-matz-cordray-webinar.aspx.
[4] Morning Consult on behalf of the American Bankers Association, "National Survey: U.S. Consumers Remain Happy with Their Bank, Competitive Financial Services Marketplace" (Oct. 9, 2023) *available at* https://www.aba.com/about-us/press-room/press-releases/consumer-survey-consumers-happy-and-competitive.
[5] America's Credit Unions, "Monthly Advocacy Survey" (March 2024).

linked to declined transactions. By covering the shortfall, individuals are spared from NSF fees imposed by merchants and the adverse effects on credit scores due to late or missed payments.

Most credit union members do not over-use overdraft protection services.[6] Although a small subset of consumers may become overly reliant on these services, the solution should not be to regulate them out of existence. Instead, the Bureau should collaborate with community financial institutions like credit unions by investing in comprehensive financial education programs that can empower consumers to make informed decisions about their money, reduce reliance on overdraft services, understand other options available, and improve their overall financial health. Credit unions already invest in controls, outreach, and education to protect members that most frequently use overdraft, and the Bureau should seek to complement these measures.

Credit unions, with their member-focused ethos, offer services tailored to assist their members in managing their finances effectively. They provide various options to cover instances where members unintentionally or intentionally overdraft their accounts, including checks, automatic payments, and debit card transactions. Credit unions prioritize compliant and user-friendly options for checking account holders and work with members to facilitate automatic transfers from savings accounts if they overdraw their checking account. The ability to use existing funds or credit options to cover overdrafts not only simplifies financial transactions but also promotes better financial planning and management. And although many consumers opt to backstop their checking account through a savings account or line of credit, others who lack savings, have had negative experiences with credit in the past, or have poor or thin credit files may value the simplicity and security of their financial institution's courtesy pay program.

To ensure transparency and understanding, credit unions maintain regular communication with members who use overdraft services, providing detailed information about limits, fees, and how the service operates. Many credit unions offer low balance alerts to notify members when they are approaching a zero balance and allow them to make informed decisions about whether to utilize overdraft protection. Credit unions are deeply committed to financial education, offering workshops, online resources, and one-on-one counseling to help members build budgeting skills, understand credit, and plan for their financial futures.

Furthermore, credit unions go beyond simply offering overdraft and educating members. They design their overdraft programs to protect frequent overdrafters. They set overdraft limits and require repayment within a certain number of days for a member to retain eligibility which helps protect members by ensuring overdraft does not burden them with long-term, unsustainable debt. Credit unions understand their members and they work with them to avoid negative outcomes, but they cannot dictate their account management strategies; instead, they recognize that their responsibility lies in furnishing consumers with viable services and comprehensive information about products, enabling them to make informed decisions regarding their financial

[6] *Id.*

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management. The Bureau would better serve consumers by emulating this perspective and working to educate, not dictate to the American people.

While there are fees associated with these programs, they are fees for a service, consumers are aware of these fees, and largely feel that these fees are a reasonable cost for such a crucial service.[7] The Federal Reserve Bank of New York recently found that, "basic aspects of overdraft are salient: people are well aware of how often they overdraw and how much it costs them."[8] Credit unions, like all financial institutions, cannot operate without revenue. Every product or service that is offered generates costs, and not all products and services generate revenue. For overdraft programs, the costs take the form of account establishment and maintenance, call centers, branch servicing, collections, customer communications. Additionally, these programs generate a host of costs that the Bureau would not allow impacted institutions to recoup such as vendor services, compliance testing, technology, and the cost of checking accounts, which in and of itself includes a variety of sub-costs such as fraud prevention. Absent all context, no doubt consumers would be happy to see the fee reduced. However, if they understood the actual impact of that reduction—that their ability to access overdraft protections would be placed in jeopardy—certainly they would not.

America's Credit Unions and all of our league partners have met with CFPB Director Chopra on multiple occasions and discussed the view that market forces are shifting financial institutions away from a reliance on fee income. This was echoed in the proposed rule by the Bureau's research:

> Beginning in late 2021, a number of large banks began announcing and implementing changes to their overdraft policies. Some banks eliminated overdraft fees altogether or reduced them to $10 or $15 per transaction. Some banks made changes to their policies by expanding their fee waiver policies, including establishing a daily limit of one fee per day; establishing de minimis negative balance thresholds, within which overdrafts do not result in a fee of $50 or more; and implementing grace periods giving consumers time through the next business day to bring their accounts positive before a fee is assessed. Collectively these changes resulted in a sustained reduction in overdraft revenues as compared to pre-pandemic levels. Marketwide overdraft revenue in 2022 was an estimated $9.1 billion ($7.9 billion in 2019 dollars, a 37 percent drop in real terms).[9]

This is no doubt true. Coupled with this observation, however, was the Director's recommendation that credit unions, especially small credit unions, look elsewhere to supplement that income, such as through credit cards and mortgage or auto lending. While there may be some credence to that suggestion by the CFPB and NCUA in a vacuum, when viewed in juxtaposition to the proposed rule, and when considering the unique nature of credit unions, the rationale does not hold. Credit unions are fundamentally different from other financial institutions in a myriad of ways that make the proposition of simply flipping a switch and

[7] Morning Consult on behalf of the American Bankers Association, "National Survey: U.S. Consumers Remain Happy with Their Bank, Competitive Financial Services Marketplace" (Oct. 9, 2023) *available at* https://www.aba.com/about-us/press-room/press-releases/consumer-survey-consumers-happy-and-competitive.
[8] Federal Reserve Bank of New York, "Learning by Bouncing: Overdraft Experience and Salience" (Apr. 1, 2024) *available at* https://libertystreeteconomics.newyorkfed.org/2024/04/learning-by-bouncing-overdraft-experience-and-salience.
[9] 89 FR 13852 (2024).

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replacing one form of revenue with another impossible. They are limited by specific membership eligibility criteria, known as a field of membership, which narrows their potential customer base. Statutory and regulatory constraints restrict their range of financial products and services, business lending capabilities, and investment options, confining their avenues for revenue. And as not-for-profit entities, credit unions cannot raise capital through stock sales and must instead rely on retained earnings and member deposits, limiting rapid growth or expansion.

To be sure, as noted in the above excerpt, financial institutions, including credit unions, are changing the way that they offer overdraft protection, and they will continue to change as the market and their members change in turn. But for that very reason, the Bureau should allow the market to influence the business decisions of financial institutions without interference. By putting its thumb on the scale, the Bureau may simply be hastening the inevitable shift away from fee income that Director Chopra described, but when it does so it also risks the stability and viability of the entire credit union industry, which is uniquely member-driven, but also uniquely constrained in its ability to quickly pivot.

Overdraft protection programs embody an indispensable tool in contemporary financial management. They offer a practical and convenient solution for overcoming temporary financial gaps, thereby playing a significant role in maintaining financial stability and assisting consumers in managing their cash flow efficiently. This ensures that individuals can meet their financial obligations without disruption. If these programs were to be discontinued, it could lead to a significant increase in missed payments and financial instability for consumers. Without the safety net that overdraft protection provides, individuals might face higher fees from missed payments or insufficient funds, potentially damaging their credit scores and leading to a cycle of financial distress.

## Impact on Financial Inclusion

The proposed rule's reconfiguration of overdraft services could unintentionally set back the progress made in financial inclusion efforts, particularly for populations that have historically been excluded or underserved by the banking sector. Overdraft facilities serve not merely as a financial product but as a critical gateway for those who find themselves on the periphery of the financial system, offering them an entry point into the world of mainstream banking. For individuals lacking access to conventional credit options or those in the process of establishing a credible banking history, the availability of overdraft services provides an indispensable buffer against financial volatility. This buffer affords them the flexibility to manage their finances in the face of unexpected expenses, without which they might resort to alternative financial services with less favorable terms.

Furthermore, the presence of overdraft services within formal financial institutions plays a pivotal role in drawing underbanked individuals into a more stable and regulated financial environment. It serves as a key incentive for these individuals to transition from using cash or high-cost financial services to engaging with banks and credit unions, thereby fostering a sense

of trust and belonging. And beyond the direct impact to overdraft programs, the proposed rule would almost certainly impact other products and services that help draw in the underbanked.

In a recent America's Credit Unions national survey of members of both exempt and non-exempt asset sizes, 93 percent of respondents that provide free checking reported that it would be impacted in some way by the proposed rule and 13 percent say they would have to end it altogether. This becomes even more stark when looking at low-income credit unions, where 97 percent said their free checking products would be impacted and 14 percent said they would have to end free checking.[10] Credit unions work hard to serve members through financial education programs and credit builder programs, but those too would be at risk, with 59 percent and 39 percent, respectively, of respondents saying they would have to scale these programs back.[11]

Although the Bureau might, in the name of "transparency", support a reduction in the prevalence of courtesy-pay overdraft protection programs in favor of an up-front pricing schema such as an annual service fee, this outcome would actually serve to harm all account holders. One of the key strengths of the courtesy-pay system is its ability to differentiate between users based on their actual use of overdraft services. This ensures that those who manage their finances carefully and avoid overdrawing their accounts are not unfairly penalized. By charging only those who use the service, it aligns fees with behavior, fostering financial responsibility among account holders.

Moving to a flat annual service fee for overdraft protection, would impose a one-size-fits-all charge on all account holders, regardless of their overdraft usage. This not only undermines the principle of fairness but also removes the incentive for individuals to manage their accounts prudently. Such a model could lead to a situation where those who have never overdrawn their account or who do so very infrequently are forced to subsidize those who regularly incur overdrafts. But this would also perversely impact those who do utilize overdraft and seek to reduce their reliance on the service. As their use of overdraft protection is reduced, their cost would remain the same. This approach could significantly increase the financial burden on consumers who are already struggling, by introducing unavoidable fees that do not reflect their banking behavior. Consequently, the shift could not only erode trust and satisfaction among a financial institution's membership but also discourage good financial management practices, ultimately harming the very individuals it aims to protect.

Through regular interaction with their credit union, consumers can build a banking relationship, enhancing their financial literacy and confidence, which are fundamental steps toward utilizing additional banking products and services. This relationship-building is crucial for long-term financial health and inclusion, as it paves the way for access to credit, savings accounts, and investment products, further integrating individuals into the financial mainstream. But without the free or low-cost products that make credit unions attractive to these populations, those benefits disappear.

[10] America's Credit Unions, "Monthly Advocacy Survey" (March 2024).
[11] *Id.*

By imposing limitations on overdraft services, the proposed rule risks alienating the very individuals it seeks to protect, potentially erecting barriers to their financial participation. This could deter those without robust banking relationships from seeking or maintaining engagement with formal financial institutions, thereby exacerbating the financial exclusion of vulnerable populations. The unintended consequence of such regulatory action is a broader financial inclusion gap, undermining national efforts to enhance access to banking services and economic opportunities for all. The importance of carefully balancing consumer protection with the promotion of financial inclusion cannot be overstated, as any regulatory measures that inadvertently hinder the latter could have profound and lasting impacts on the economic well-being and empowerment of underserved communities.

## Proposed Rule

The Bureau's proposed rule to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by very large financial institutions is impractical and represents a price cap masquerading as a choice. This proposal not only undermines the principles of a free-market economy but also imposes unreasonable standards and requirements on financial institutions that would ultimately harm consumer choice and financial stability.

*Benchmark Fee*

The proposed option for financial institutions to determine whether an overdraft charge is considered above breakeven overdraft credit by relying on a benchmark fee set by the CFPB is fundamentally flawed. The inherent complexity and variability of financial institutions' operational costs make a one-size-fits-all approach, such as a benchmark fee, not only inappropriate but also detrimental to the diversity and competitiveness of the financial services industry. Furthermore, it is beyond the remit of the CFPB to interfere with the costs of products and services offered by financial institutions or to dictate the profitability of specific banking activities. Such interference contradicts the very essence of free-market capitalism and stifles innovation. Financial institutions must retain the ability to price services, including overdraft, in a manner that reflects the risk, operational costs, and market dynamics unique to each institution.

Furthermore, the CFPB's reliance on data from only five very large financial institutions to set a proposed benchmark fee is both inadequate and misleading. This sample size, representing a mere 3 percent of the institutions directly affected by the rule, is insufficient to accurately reflect the diverse operational and cost structures across the sector.[12] The proposed benchmark fee, based on such a narrow data set, cannot and should not be used as a standard for all large financial institutions, let alone influence the pricing strategies of smaller institutions indirectly subject to the rule. This approach risks standardizing overdraft fees in a way that does not

[12] *Id.*

account for the vast differences in operational efficiencies, market focus, and consumer demographics served by different institutions.

America's Credit Unions is opposed to the entirety of the benchmark fee option presented by the Bureau, in the validity of its calculations in arriving at the proposed fees, its authority to set the fee in the first place, and the very notion that fees for services should be charged at cost. However, if the Bureau issues a final rule using one of the benchmark fees listed in the proposed rule, it should select the $14 fee, as it would be closer to being representative of the actual costs of operating an overdraft fee program than the lower amounts proposed.

*Breakeven Fee*

The proposed rule's option for institutions to determine whether an overdraft charge is considered above breakeven overdraft credit by calculating their own costs and losses using the standards set forth in the proposal is additionally flawed and is not only a burden but also runs directly counter to the principle that financial institutions are entitled to earn a profit for the services they provide. This approach ignores the realities of banking operations and the need for institutions to maintain a level of profitability to ensure safety, soundness, and the ability to innovate and serve their communities effectively.

The Bureau's exclusion of certain costs, including fraud costs, in the breakeven calculation for providing overdraft protection services misunderstands the realities of financial institution operations. The exclusion of costs deemed not specifically traceable to the provision of non-covered overdraft credit, which preliminarily excludes general overhead costs and certain charge-off losses not directly tied to overdraft services, presents significant challenges for credit unions and other financial institutions, both in terms of accounting practices and operational realities. General overhead costs, while not directly attributable to any single service, are fundamental to the day-to-day operations of a financial institution. These costs include expenses related to maintaining physical branches, employee salaries, utilities, and the infrastructure necessary to support all banking services, including overdraft protection. The distinction the CFPB makes between costs directly attributable to overdraft services and general operational costs ignores the fact that these services cannot exist in a vacuum. For example, the cost of maintaining secure, functional banking environments—both physical and digital—is essential for the provision of all services, including overdraft protection. Excluding these costs from the breakeven fee artificially lowers the calculated cost of providing overdraft services, making the breakeven option in the proposed rule less viable for covered institutions, and serving to funnel those institutions toward selecting the Bureau's benchmark fee.

Additionally, the difficulty in segregating costs directly associated with overdraft protection from other banking services further complicates the application of the CFPB's proposed break-even standard. Financial institutions often employ integrated systems and cross-functional teams to manage various banking services, making it exceedingly difficult to assign costs to specific services without a degree of arbitrary allocation. For instance, technology and cybersecurity investments are critical for the secure operation of all banking functions, yet their benefits

extend across the institution, supporting everything from deposit accounts to loan processing and overdraft protection. The proposed guidelines do not fully acknowledge the complexities of modern banking operations, where costs and services are intrinsically interlinked, making it impractical to precisely allocate costs in the manner the CFPB suggests.

Securing accounts against fraud is a critical component of providing financial services, regardless of whether an account includes overdraft protection. Fraud protection efforts are not just an operational choice but a necessity in today's financial ecosystem, ensuring the safety and trust of members in their credit unions. The proposed standard suggests that costs and charge-off losses specifically traceable to the provision of non-covered overdraft credit can be included. However, the exclusion of fraud costs that benefit accounts, regardless of overdraft status, overlooks the interconnected nature of fraud protection and overdraft services.

When an account is compromised, the repercussions extend beyond the immediate assets in the account to potentially include the overdraft protection limits, thus exposing credit unions to additional financial risks. Fraud costs are, in many ways, directly related to the provision of overdraft services, as they are instrumental in mitigating losses associated with account takeovers and the unauthorized use of overdraft facilities.

Furthermore, the exclusion of such costs does not account for the reality that fraud detection and prevention are integral to maintaining the integrity of overdraft services. It requires substantial investment in technology, staff training, and ongoing monitoring, all of which contribute to the overall cost of providing these services. The ability to include these costs in the break-even calculation would provide a more accurate reflection of the true costs associated with offering overdraft protection, ensuring that credit unions can continue to offer these services without compromising on the security and financial stability of their members.

Finally, the data required to calculate the breakeven fee in proposed § 1026.62(d)(1)(i) would require additional clarity to ensure timely compliance. Specifically, America's Credit Unions is concerned about the feasibility of calculating the total direct costs and charge-off losses over the previous 12 months, as mandated, particularly for institutions that may not have comprehensive data for this period. This requirement could pose significant challenges for entities without the capability to track the specifically traceable overdraft costs and charge-off losses for a full year or those that would, as a result of the rule, be required to implement these capabilities for the first time.

The Bureau should provide clarity on whether financial institutions have the flexibility to use available data from a shorter timeframe to extrapolate their costs to meet the breakeven calculation requirements. Without further clarity or this flexibility, many institutions might be compelled to adopt the benchmark cost provided, potentially leading to a scenario where they are disadvantaged by not being able to use a more accurate, potentially higher breakeven cost reflective of their true operational expenses.

*General Concerns*

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The proposed rule leaves covered institutions in a precarious position with four untenable options: 1) apply TILA and CARD Act provisions to overdraft, which, as will be discussed, is entirely impractical; 2) offer overdraft services at a breakeven cost determined by the financial institution annually; 3) offer overdraft services at the benchmark set by the Bureau; or 4) to discontinue the overdraft program altogether. While the first option is not remotely viable, the three remaining scenarios although possible, present significant negative implications for consumers and financial institutions, exacerbating the very issues the CFPB aims to mitigate.

Offering overdraft services at the breakeven or benchmark cost would inevitably lead to a tightening of eligibility criteria as financial institutions seek to mitigate risk without the corresponding revenue to offset it. As noted previously, this change would disproportionately affect those consumers who rely on overdraft programs as a financial safety net, leaving them without an essential service in times of need. The irony here is palpable: a rule intended to protect consumers from fees could very well restrict access to a crucial financial tool, particularly for those living paycheck to paycheck or those without alternative credit options. On the other hand, if institutions opt to remove overdraft services entirely, the repercussions extend beyond just those who frequently incur overdrafts. All members of a financial institution stand to lose a valuable service that provides flexibility and peace of mind in managing their finances. The removal of overdraft services could lead to increased instances of declined transactions, causing not only inconvenience and distress, but also a potential cascade of financial harm for consumers. Moreover, the absence of overdraft protection would likely lead to a rise in alternative, and potentially more costly, forms of short-term credit, pushing consumers towards payday lenders and other high-cost credit providers that may engage in predatory practices.

These scenarios underscore the broader concern: the proposed rule may inadvertently erode consumer welfare and financial inclusion. By limiting the ability of financial institutions to offer tailored, risk-based pricing for overdraft services, the rule could reduce the overall availability of these services, forcing consumers into less desirable and more expensive alternatives. This outcome would contradict the CFPB's mission to protect consumers and would represent a step backward in our collective efforts to enhance financial stability and access to credit for all Americans.

*Compliance Date*

The proposed compliance date of October 2025, with an assumption that financial institutions will have approximately a year from the final rule's publication in the *Federal Register* to implement the changes, is unrealistic. The scope of the required modifications is vast, touching nearly every aspect of how credit unions manage overdraft services. This includes deep system reconfigurations, extensive updates to consumer notifications and disclosures, alterations to account opening procedures, and comprehensive staff training programs. Each of these elements not only demands time for development and implementation but also requires rigorous testing to ensure accuracy and compliance with the new regulation.

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Moreover, the tight timeline does not adequately account for the potential need for external vendors to update their systems and services, a factor that could introduce further delays beyond the control of individual credit unions. The proposed changes are not merely procedural; they represent a significant shift in the operational, technological, and customer service frameworks of financial institutions. This level of transformation would require a carefully planned and executed strategy to avoid unintended consequences, such as service disruptions or compliance risks.

In addition to the challenges already discussed, the CFPB's proposal implicates significant concerns regarding debit card issuance, further underscoring the need for an extended implementation timeline. The transition to the new overdraft rules could necessitate substantial changes to the way credit unions issue debit cards, especially for members with checking accounts that can access existing overdraft lines of credit through the debit card. Under the current regulatory framework, these debit cards are typically issued under Regulation E focusing on electronic fund transfers. And while existing overdraft lines of credit may be subject to Regulation Z, they are not generally subject to rules governing credit cards, including credit card rules implemented pursuant to the CARD Act. However, with the new rule, these debit cards would be subject to CARD Act and Regulation Z requirements, which, among other things, deal with the disclosure of credit terms, provide different dispute rules for card purchases, and set forth rules designed to cover credit card accounts—not debit card accounts that might only occasionally access a separate line of credit for overdraft protection. Within the proposed rule this transition from a debit card to a hybrid debit-credit card is presented as a relatively minor change, however this shift has serious implications, complicating the card issuance process and member communication significantly.

Credit unions will need to navigate the complexities of informing members about the change in card status, which includes not only a change in the regulatory framework governing their cards but potentially also a change in their card number. This notification process is not trivial; it requires an institution-wide strategy to ensure that members are adequately informed of the changes, understand their implications, and are given sufficient time to make informed decisions regarding whether to apply for or accept the new hybrid cards. Moreover, credit unions must decide if they will continue to offer debit protections with the a checking line of credit service, a decision that carries its own set of regulatory, operational, and customer service challenges.

The practical issues that the CFPB needs to address are manifold. For instance, can members keep their current debit card numbers, or will they be required to transition to new numbers due to the change in the nature of the product? This is not merely a change in terms or conditions but a fundamental change in the product offered to members. The logistical hurdles of reissuing cards, ensuring compatibility with existing banking, payment, and card systems (debit cards and credit cards are often managed under completely separate systems), and managing member expectations and preferences are significant. Moreover, the timeline for notifying members about these changes is critical. Given the scope and impact of the transition, a mere change in terms notice may not suffice; a more comprehensive educational approach may be necessary to guide members through the transition. Furthermore, it is possible that these inevitable logistical

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hurdles may even force credit unions to simply stop offering existing overdraft lines of credit as overdraft protection on checking accounts entirely—depriving credit union members of a valuable protecting service.

Given these complexities, if the Bureau proceeds in issuing a final rule, America's Credit Unions would request an extended implementation period. A minimum of 18-24 months post-publication of the final rule would provide a more realistic timeframe for credit unions to undertake the comprehensive changes required. This additional time would allow for the comprehensive approach to system upgrades, employee training, and customer communication strategies, that the proposed rule mandates thereby facilitating a smoother transition to the new regulations for both credit unions and their customers.

## Impracticality of TILA for Overdraft

The Bureau's suggestion that overdraft services be provided via a TILA-regulated loan not only misinterprets the essence of "credit" under TILA but also imposes impractical burdens on financial institutions and consumers. The existing framework under the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E[13] appropriately governs overdraft services, ensuring consumer protection while allowing financial institutions to offer this critical service efficiently.

The proposed shift to treat overdrafts as TILA-regulated loans is fraught with complications. First, it overlooks the fundamental nature of overdrafts as a service provided to cover occasional, short-term funding gaps, not a form of extended credit. Many consumers depend on overdraft protection as a necessary financial safety net, often because they lack the creditworthiness required for traditional lines of credit. As the CFPB acknowledges in the proposed rule, lines of credit associated with overdraft are "typically limited to consumers whose credit history allows them to qualify for an overdraft line of credit or who have available credit on a credit card."[14]

By imposing ability-to-pay underwriting requirements and eliminating automatic fund transfer repayments, the proposal would inevitably exclude a large segment of consumers who currently benefit from overdraft services. A 2018 Pew Charitable Trust survey found that "[t]hose who overdraw and want credit are often unable to access it. For example, more than half said they do not have enough available on a credit card to cover a $400 emergency expense. Four in 10 said they had applied for credit in the past year; of those, 30 percent were declined for the entire amount, and 10 percent were approved for only a fraction of the amount requested."[15] The heightened underwriting standard in the proposed rule could drastically reduce the availability of overdraft protection, pushing consumers towards more expensive and less regulated alternatives leading to higher fees and increased financial instability.

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[13] 12 C.F.R. § 1005.17.
[14] 89 FR 13852 (2024).
[15] Pew Charitable Trusts. "Millions Use Bank Overdrafts as Credit" (March 21, 2018) *available at* https://www.pewtrusts.org/en/research-and-analysis/articles/2018/03/21/millions-use-bank-overdrafts-as-credit.

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Additionally, the expansion of overdraft lines of credit as suggested by the CFPB would necessitate substantial investments from financial institutions, especially those that do not currently offer such products. These costs, stemming from the need to develop, implement, and maintain new lending programs that comply with TILA and the CARD Act, would likely be passed down to consumers in the form of higher fees or more restrictive service offerings. Such developments could lead to a less inclusive financial system where lower-income and less creditworthy consumers find themselves further marginalized and with fewer options to manage their financial needs.

The proposed rule's suggestion to transition overdraft services to a checking line of credit (under the proposed rule a "covered overdraft credit account") presents a particularly impractical option for credit unions due to the statutory 18 percent interest rate ceiling mandated under the Federal Credit Union Act.[16] This cap, which limits the maximum interest rate credit unions can charge on loans and lines of credit, would significantly constrain their ability to offer such products to the consumers who had previously been eligible for overdraft protection. The narrow margin imposed by the usury cap makes it economically unfeasible for credit unions to provide a checking line of credit as an alternative to traditional overdraft services, as the costs associated with offering and managing these lines of credit could surpass the interest revenue limited by the cap.

This shift would disproportionately affect credit unions, which often serve as primary financial institutions for underserved and lower-income populations. Many of these members value the overdraft services not just for the financial flexibility they provide, but also because they often do not qualify for traditional lines of credit due to their credit histories or income levels. By pushing credit unions towards offering a product that is less accessible and potentially more costly to their members, the proposed rule risks undermining the very foundation of financial inclusion that credit unions support.

It is clear that the proposed rule on overdraft fees is a significant overreach into the operations of financial institutions and also a threat to the principles of free-market capitalism, innovation, and consumer choice. This misguided approach will be potentially harmful to the very consumers it seeks to protect. We urge the CFPB to rescind the rule and work towards solutions that truly balance consumer protection with the need for financial institutions to offer comprehensive, sustainable services that cater to the diverse needs of their members.

## Impermissible Expansion of TILA

The Bureau's proposed rule fundamentally misconstrues the concept of "credit" as defined under TILA, venturing into an impermissible expansion of the term that could have far-reaching implications for financial regulation and consumer banking practices. TILA clearly defines "credit" as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment."[17] This definition centers on the formal extension of credit as a deliberate,

[16] 12 U.S.C. 1757(5); 12 C.F.R. § 701.21 (c)(7)(i).
[17] 15 U.S.C. § 1602(f).

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agreed-upon arrangement between the creditor and debtor, underlining the consensual nature of credit transactions. Additionally, under TILA's definition of credit, there are two rights granted to the debtor by the creditor, the first is the right to incur debt, and the second is to defer payment of that debt. Neither of those rights is present in overdraft protection programs.

The CFPB's attempt to redefine "credit" to encompass overdraft fees based on their amount, regardless of the context in which they are incurred, strays significantly from established legal interpretations and practices under Regulation Z, which implements TILA. There is no precedent within Regulation Z that supports interpreting overdraft services, particularly those extended as a courtesy by financial institutions (often known as "courtesy pay" and defined as "overdraft services" in the proposed rule), as a form of credit under TILA. These services are provided at the discretion of the institution, with the explicit understanding that the institution retains the right to decline transactions that would overdraw an account. Thus, overdraft protection does not grant consumers an unequivocal right to incur a debt in the manner contemplated by the definition of "credit" in TILA.

Furthermore, overdraft protection programs do not grant debtors the right to defer payment, a critical aspect of credit as defined by TILA. When a consumer incurs an overdraft fee, there is no agreed-upon right to defer the payment of this fee. Instead, the fee is typically due immediately or within a very short timeframe, and the consumer is obligated to settle this debt without the option for deferment. This immediate obligation to pay contradicts TILA's stipulation that credit involves the deferral of debt repayment.

Moreover, such courtesy overdraft programs do not establish a debtor-creditor relationship in the traditional sense. Instead, they represent a service provided by the institution to prevent transaction denials and potential inconvenience to the consumer. Under these programs, consumers do not have a guaranteed right to overdraw their accounts; rather, they benefit from a discretionary service that may cover occasional overdrafts. Redefining this service as "credit" would not only distort the original intent of TILA, but also undermine the flexibility and discretion that financial institutions currently have to support their consumers' transactional needs.

Since the establishment of TILA more than half a century ago, it has been widely recognized that overdraft protection (separate from an overdraft line of credit) does not fall under the purview of TILA and its implementing Regulation Z. This position was clearly articulated in the Joint Guidance on Overdraft Protection Programs, which was released by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) in February 2005. The Guidance states:

> TILA and Regulation Z require creditors to give cost disclosures for extensions of consumer credit. TILA and the regulation apply to creditors that regularly extend consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments.

 

> Under Regulation Z, fees for paying overdraft items currently are not considered finance charges if the institution has not agreed in writing to pay overdrafts. Even where the institution agrees in writing to pay overdrafts as part of the deposit account agreement, fees assessed against a transaction account for overdraft protection services are finance charges only to the extent the fees exceed the charges imposed for paying or returning overdrafts on a similar transaction account that does not have overdraft protection.[18]

Furthermore, in the Bureau's 2015 proposed rule on Prepaid Accounts Under the EFTA (Regulation E) and TILA (Regulation Z), the Bureau reaffirmed the fact that TILA defines "credit" as "the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment."[19] It further stated that the charges imposed by a financial institution for paying an item that overdraws a deposit account are not "finance charges" unless "the payment of such items and the imposition of the charge were previously agreed upon in writing."[20] The Bureau noted that the typical fees associated with overdraft programs do not fall under the definition of finance charges according to Regulation Z. Consequently, a financial institution providing overdraft services does not qualify as a creditor under Regulation Z, as it does not levy a finance charge, nor does it arrange repayment through a written agreement in more than four installments. The Bureau stated then that it would not reverse this long-standing policy.

In the current proposed rule, the Bureau notes that because of the adoption of information technology systems by financial institutions, the shift in overdraft protection from an occasional courtesy provided to consumers into frequently used and promoted products, and the scale of profits generated from overdraft fees by the largest institutions, the exception from Regulation Z's definition of "finance charge" for overdraft protection is no longer warranted.[21] The Bureau further notes that, "in adopting this exception, the [Federal Reserve Board] did not rely on an interpretation of the statute; rather, the Board used its authority to create regulatory exceptions."[22] This is a fundamental misapprehension by the Bureau.

A finance charge is "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the **creditor** as an incident to or a condition of the extension of **credit**."[23] As noted above, the plain language of TILA states that credit is the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment, a definition which does not describe overdraft protection. Overdraft protection is not credit, therefore charges associated with overdraft, i.e. overdraft fees, are not finance charges, and they cannot be subject to Regulation Z. The Board, in creating the regulatory exception for overdraft protection, did, in fact, correctly interpret TILA, and it is the Bureau which has erred in that regard. The Bureau has attempted to shoehorn overdraft protection into the definition of "finance charge" by defining overdraft protection services as "overdraft credit," but regardless of its insistence that overdraft protection is credit, the plain language of TILA is unambiguous that it is not.

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[18] 70 FR 9127 (2005).
[19] 15 U.S.C. § 1602(f).
[20] 79 FR 77101 (2014).
[21] 89 FR 13852 (2024).
[22] *Id.*
[23] 12 C.F.R. Part 1026.4(a).

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Since its enactment, Congress has amended TILA fourteen times, and in each of those fourteen amendments, Congress has chosen not to remove or supersede the exceptions for overdraft fees found in Regulation Z. On several of the occasions in which Congress has amended TILA, again without removing the exception for overdraft fees, it has done so with the specific purpose of setting interest rates and fee caps for financial products.[24] These deliberate actions by the legislative body makes clear two important points: 1) the intent of Congress was for it, not executive branch agencies, to be the primary authority in determining the regulation of fees and interest rates; and 2) if the intent of Congress was for overdraft fees to be subject to TILA, Congress would have made overdraft fees subject to TILA. Significant changes to the regulatory framework governing financial products and services should be the result of legislative action rather than administrative reinterpretation or expansion.

The CFPB's proposed reinterpretation of "credit" to include such overdraft arrangements exceeds its regulatory authority, attempting to impose a new definition of credit that diverges from the one established by Congress. This overreach would introduce significant legal and operational challenges for financial institutions, leading to a reduction in the availability of valuable overdraft protection services for consumers. It would effectively rewrite the established legal framework governing credit transactions, setting a concerning precedent for future regulatory actions and the interpretation of consumer financial protection laws.

### Illusory Exemption and Arbitrary Threshold

The implications of the proposed rule, while ostensibly targeting only very large financial institutions, extend far beyond its direct scope, potentially ushering in significant repercussions for smaller credit unions that are integral to our nation's financial ecosystem. These smaller institutions, characterized by their close community ties and member-focused services, could find themselves in an untenable position as indirect casualties of a rule that does not even purport to govern their operations. While some larger institutions may be able to offer overdraft protection programs at cost, facilitated by their broader revenue bases and economies of scale, starkly contrasts with the operational realities of smaller financial institutions.

As the marketplace reacts to the constraints placed on larger entities, smaller credit unions may face intense pressure to lower their overdraft fees in order to stay competitive. This scenario is not merely hypothetical, but a likely outcome of the natural market dynamics that drive pricing strategies across the financial services sector. Smaller institutions, many of which operate on thinner margins than their larger counterparts, rely in part on fee income, including overdraft fees, to sustain their operations and fund essential services for their members. The forced reduction of these fees, in a bid to remain competitive, could severely impact their financial viability, undermining their ability to provide affordable, accessible financial services to underserved communities. Additionally, for those institutions that are unable to reduce their fees, the wholesale discontinuation of overdraft protection programs may be the only reasonable business decision. This eventuality was borne out in a recent America's Credit Unions survey

[24] Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 108 Stat. 2190 (1994); Military Lending Act, Pub. L. No. 109-364, § 670, 120 Stat. 2083, 2266-2270 (2006).

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where exempt respondents, responded that if they were faced with a significant increase in the number of very large institutions offering free or low-fee overdraft 71 percent would be forced to reduce their fee to remain competitive and 11 percent would be forced to remove their overdraft protection program entirely.[25]

Furthermore, the indirect pressure that the rule would introduce will exacerbate the disparities between large and small financial institutions, potentially accelerating market consolidation as smaller entities struggle to compete. This consolidation is antithetical to the objectives of financial inclusion and diversity within the financial services industry, as it reduces consumer choice and may lead to underserved areas becoming even more financially marginalized. Perhaps more concerning is the prospect of consumers turning to payday lenders as an alternative to traditional overdraft protection services. This outcome represents a significant regression from the objectives of consumer financial protection, exposing consumers to high cost borrowing options characterized by predatory lending practices and spiraling debt cycles. Such a scenario starkly contrasts with the current responsible, regulated provision of overdraft protection services by credit unions, highlighting a critical gap in the proposed rule's consideration of its broader market implications.

It is important to note that the Bureau, in its attempt to paint overdraft protection programs as a net negative for consumers, disingenuously compares the loans offered by payday lenders to overdraft protection programs. The Bureau's conclusion that overdraft fees, if viewed in terms of annual percentage rate (APR) represent a 17,000 percent APR as compared to a payday loan's 391 percent APR, which is a conflation of APR with cost.[26] Setting aside the fact that the data on which the Bureau relies is nearly 15 years old, the APR is primarily designed to convey the cost of borrowing over a year, including interest and additional fees, making it an appropriate measure for long-term credit products where balances might be carried for extensive periods. However, overdraft fees, which are incurred as one-time charges for short-term liquidity, are inherently different in nature. Overdraft fees are due at the time they are assessed, and members must repay their overdraft balance within 30 days with credit unions frequently freezing access to overdraft for those that do not. Using APR to describe the cost of an overdraft fee is like comparing the cost of a taxi to a cross-country flight based solely on a per-mile charge, ignoring the different contexts and purposes of each service, as overdrafts are intended for immediate, short-duration funding and are typically resolved within days without any compounding interest.

The proposed rule's failure to consider the downstream effects on smaller credit unions reflects a myopic approach to regulation that overlooks the interconnected nature of financial markets. Although America's Credit Unions urges the immediate rescission of the proposed rule, at a bare

[25] America's Credit Unions, "Monthly Advocacy Survey" (March 2024).
[26] 89 FR 13852, 13868 (2024) "For example, CFPB research found that in 2012 the median overdraft fee was $34, the median size of a debit card transaction incurring an overdraft fee was $24, and that the majority of non-covered overdraft credit transactions were repaid within three days. Putting these figures in lending terms, the annual percentage rate (APR) for such a non-covered overdraft credit transaction would be 17,000 percent (if transaction fees were included in the APR calculation). By comparison, CFPB research found that the APR for a typical payday loan was 391 percent and APRs on credit cards can range between 12 and 30 percent."

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minimum the Bureau should conduct a comprehensive market impact study that includes these indirect effects on smaller institutions before taking any action in relation to overdraft. Such an analysis is essential to ensure that well-intentioned regulations do not inadvertently harm the very consumers they are designed to protect by destabilizing smaller credit unions that play a critical role in providing community-based financial services.

The selective application of the proposed rule to only very large financial institutions is arbitrary and the lack of precedent or supportive data for the bifurcation of the industry is evidence of the unjustified nature of the rule. The CFPB's decision to apply this rule solely to institutions exceeding $10 billion in assets is not only unprecedented, but also lacks a sound rationale, undermining the fairness and consistency expected in regulatory actions. Although America's Credit Unions does not support an expansion of the scope of the proposed rule, the vague and arbitrary reasoning for this threshold calls the entire endeavor into question.

The CFPB's justification for this arbitrary threshold—drawing on the statutory authority for primary supervision of large institutions[27]—does not logically extend to the limitation of regulatory scope in the context of overdraft fees. The cited Dodd-Frank Act provision[28] is meant to delineate supervisory responsibilities, not to create a bifurcated regulatory environment where consumer protections vary significantly based on the size of an institution. This approach fails to account for the uniform nature of consumer experiences with overdraft fees across different sizes of financial institutions.

Moreover, the decision to exempt smaller institutions from the proposed rule, citing concerns about compliance burdens without providing detailed justifications or assessments of these burdens, is indicative of a rushed rulemaking process. The CFPB has not transparently articulated the specific challenges smaller institutions might face under the proposed regulatory framework, nor has it convincingly explained how excluding these institutions from the rule would realistically exempt them from its impacts. This lack of detail and analysis suggests an incomplete consideration of the rule's impact, potentially sidelining the concerns of a significant portion of smaller financial institutions.

By selectively applying the proposed rule to only very large financial institutions, ostensibly to alleviate potential compliance burdens on smaller entities, the Bureau effectively sidesteps the SBREFA process. This exemption appears to be more than a mere consideration for the operational challenges faced by smaller institutions; it suggests a strategic maneuver to expedite the rulemaking process without a comprehensive evaluation of its impact across the entire financial ecosystem. Such an approach undermines the spirit of SBREFA, which is designed to ensure that the voices of small entities are heard and their concerns considered before the implementation of regulations that could affect their operations.

This tactic not only shortchanges the regulatory process by avoiding a detailed assessment of the rule's implications for smaller institutions but also conveniently aligns with the Administration's

[27] 89 FR 13852 (2024).
[28] 12 U.S.C. § 5515(a).

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broader political agenda to eliminate so-called "junk fees." The single-minded pursuit of an imagined victory over "junk fees" must not compromise the integrity of the rulemaking process or neglect the potential adverse effects on small financial institutions and their customers. By circumventing a thorough SBREFA process, the CFPB misses an essential opportunity to genuinely understand the rule's impact on a critical segment of the financial services market. This oversight may harm the very consumers the rule seeks to protect by destabilizing small financial institutions that play a vital role in providing accessible and affordable financial services to diverse communities. It is crucial that the CFPB adopts a more balanced and inclusive approach to rulemaking that genuinely accounts for the interests and sustainability of small financial institutions, ensuring that regulatory actions are both equitable and conducive to the long-term health of the financial sector.

## Unconstitutional Taking

America's Credit Unions has substantial concerns with the constitutionality of the Bureau's proposed rule. Limiting very large financial institutions to offering overdraft services at or near cost echoes the constitutional issues of an unconstitutional taking as elucidated in landmark cases such as *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, and *Federal Power Commission v. Hope Natural Gas Company*.[29]

The *Bluefield* decision firmly established the principle that rates set by regulatory bodies must not be confiscatory and must allow for a reasonable return on investment. This ensures that regulation does not infringe upon the constitutional protections against deprivation of property without just compensation. Applying this principle to the proposed rule suggests that if the regulation of overdraft fees prevents financial institutions from earning a sufficient return on their services, it could be construed as a confiscatory action that violates the Fifth Amendment. The imposition of such regulatory constraints without ensuring a fair and reasonable opportunity for financial institutions to recoup their investments and operational costs might constitute an unconstitutional taking of property.

Furthermore, the *Hope* case reiterates the necessity of balancing the investor and consumer interests, highlighting that while regulatory bodies possess latitude in rate setting of public utilities, there is a constitutional boundary that must not be crossed. Although credit unions do not have investors, they do have member-owners whose interests must be similarly protected. In *Hope,* the Court found that rates must not be set in a manner that is destructive to the company's financial integrity or that disregards the rights of the company to sustain itself, attract capital, and compensate its investors. This precedent underscores potential constitutional challenges to the proposed rule as it effectively diminishes the value of the financial institutions' property rights or economic interests through overly restrictive fee regulations.

The proposed rule's focus on very large financial institutions, by applying a cost-based limitation on overdraft fees, may lead to a regulatory environment that undermines the foundational

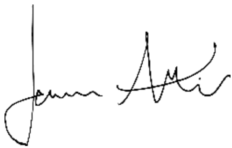
[29] *Bluefield, 262 U.S. 679 (1923); Hope, 320 U.S. 591 (1944).*

principles established by the Supreme Court regarding non-confiscatory regulation. If the rule results in fees that do not reflect the costs, risks, and necessary returns associated with providing overdraft services, it will likely raise significant constitutional concerns. Such an approach not only affects the financial viability of these services but also poses a risk of an unconstitutional taking without just compensation, challenging the delicate balance between protecting consumer interests and upholding the property rights of financial institutions.

## Conclusion

America's Credit Unions appreciates the opportunity to comment on the proposed rule on overdraft lending for very large financial institutions and urge the Bureau to rescind the rule or exempt all credit unions. If you have any questions, please do not hesitate to contact me at 703-842-2268 or jakin@americascreditunions.org.

Sincerely,



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