Credit Union National Association
CUNA

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The Honorable Raphael Warnock
Chairman
Financial Institutions and
Consumer Protection Subcommittee
Senate Banking Committee
United States Senate
Washington, DC 20510

The Honorable Thom Tillis
Ranking Member
Financial Institutions and
Consumer Protection Subcommittee
Senate Banking Committee
United States Senate
Washington, DC 20510

Dear Chairman Warnock and Ranking Member Tillis,

On behalf of America's credit unions, I am writing regarding the hearing entitled, "Examining Overdraft Fees and Their Effects on Working Families." The Credit Union National Association (CUNA) represents America's credit unions and their 130 million members. We strongly object to legislation, regulation and other government intervention that restricts the ability of credit unions to offer overdraft protection plans that help members resolve short-term financial difficulties.

General Comment

Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike for-profit financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. Each credit union member has equal ownership in the credit union and one vote—regardless of how much money a member has on deposit. Credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial services companies have with their customers.

As a result, credit unions' interest in their members' financial well-being and advancing the communities they serve takes on paramount importance. As you consider policy changes impacting credit unions and their members, we urge you to consider the impact any changes would have on that mission. We often find that even well-intentioned policy proposals have the unintended consequence of making credit union services less available and more expensive to those who need them the most.

Overdraft protection is a service that allows a consumer to purchase goods in situations where the payment exceeds the consumer's available balance. In accordance with all relevant laws and regulations, a consumer that uses overdraft protection has affirmatively opted-in to the service as part of their account agreement. Credit unions offer overdraft programs as a convenience and accommodation to a members' benefit, and members that choose to opt-in often do so for the peace-of-mind these services provide. In some cases, the opt-in decision was made precisely for the comfort of knowing that transactions would continue to be processed during an unexpected financial emergency or other cash shortfall.

Credit unions strive to keep their members from turning to the unregulated financial services market to meet their liquidity needs. To that end, we caution Congress, the CFPB and other regulators against taking actions that are intended to severely limit the availability of overdraft programs from reputable, regulated financial institutions.

Credit unions provide members with responsible, fair overdraft programs

America's credit unions stand as a unique example of consumer protection in practice in the financial services sector. In contrast to for-profit banks and non-depository providers, credit unions are structured as not-for-profit cooperatives. As part of this structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation.

Because overdraft programs at credit unions are specifically designed with the credit union's membership in mind, there is substantial diversity in program features. For example, credit unions have established programs linking accounts, overdraft lines of credit, courtesy pay programs, and others. In addition, credit unions often couple these programs with other initiatives intended to assist members using overdraft services with the intent of helping the member avoid future or frequent overdraft use. These initiatives include direct member outreach, low-balance alerts, caps on the number of fees per day, financial management and coaching resources, low-interest or share secured credit cards, and small-dollar loans.

There are many examples of credit unions exploring and adopting changes to their overdraft programs. While it's impossible to fully account for the diverse range of services offered by credit unions, these are examples of changes some credit unions have adopted:

- Reducing fees generally;
- Reducing fees on small transactions;
- Reducing or eliminating fees on transactions that result in small negative balances;
- Adding credit cards to the range of linked account options;
- Eliminating transfer fees;
- Automating the fee waiver process ;
- Capping the number of instances fees can be charged per day or another specified period of time;
- Increasing overdraft line of credit limits;[1]

All these changes, and many others, reveal the innovative nature of credit unions and the proactive work that credit unions are doing to secure financial well-being for all.

Irrespective of innovations in overdraft, credit unions have a track-record of establishing policies and procedures aimed at assisting members that frequently use overdraft protection. When a credit union becomes aware of a member's frequent overdraft usage, they often attempt to contact the member to address the member's financial situation and offer financial education support or alternative credit products. In these communications, credit unions inform members about other options that may be available, including financial and budgetary counseling and/or traditional loan products such as personal loans or affordable small dollar loans. These efforts support the best interest of the member and exemplify the pro-consumer nature of the credit union-member relationship.

Credit unions also establish fee waiver and forgiveness programs intended to help members who reach out for assistance. We always encourage financially distressed credit union members to contact their credit union to discuss relief options or learn about alternative products and services. Credit unions are regularly working with their members to improve their financial well-being as helping members in need is common among America's credit unions. We strongly believe credit unions should be allowed to continue working with members to develop customized solutions that help secure their financial well-being rather than Congress adopting wholesale or de facto bans on popular financial services.

This mission-driven, member-focus is a key reason why credit union members are among the most financially healthy in America and agree that their credit union cares about them. According to CUNA's 2022 National Voter Poll, consumers who use credit unions are 40 percent more likely than their counterparts who do not use credit

[1] Report "Overdraft Protection Programs: Credit Union Best Practices," Filene Research Institute available at https://filene.org/learn-something/reports/overdraft-protection-programs-credit-union-best-practices.

unions to respond "very positively" to the fact that they "can trust" their financial institution.[2] Further, credit union members are 45 percent more likely than nonmembers to respond "very positively" to the fact that their institution "cares about" their financial well-being AND are 52% more likely to say their institution "has positively impacted" their financial well-being.[3]

As a recent example of credit unions' member-focused service, the pandemic presented an unprecedented challenge. Regardless, credit unions continued to deliver critical financial services to credit union members throughout the duration of the pandemic, including working with members affected by the economic turmoil. Many credit unions responded to the financial hardships of their members by offering new loan programs, relief for pre-pandemic loans, and other solutions. Overdraft protection was a part of the credit union response to struggling members, with many credit unions reducing fees to nominal levels or increasing the amount of fees they waived.

During the crisis, many consumers purchased critical goods and services intended to help them and their families weather income flow changes or health emergencies. If Congress had acquiesced to pre-pandemic calls to eliminate overdraft entirely, then it is possible the pandemic's financial impact could have been much more significant for some consumers. The notion that banning overdraft services would assist consumers in distress is misguided and, ultimately, calls for such a ban ignore the fact that temporary financial shortfalls will still exist so long as "the unexpected" can still be an expected part of life.

We believe effectively shutting down overdraft services would unnecessarily limit credit unions' ability to assist their members and is ill-advised. Rather, the best and least disruptive path forward would be to continue permitting transactions to be processed and encouraging affected consumers to reach out to and work with their local credit union to reduce or eliminate any fees or to consider other low-cost products and services. Relying on credit unions to do what they do best is preferable to an environment where consumers are getting declined in line at the grocery store or pharmacy, or experience their rent check unpaid.

When considering laws that could limit overdraft options, we urge the Congress to bear in mind the differences between banks and credit unions in offering these programs. A recent report issued by Filene Research Institute on overdraft products found that fees were lower at credit unions than at banks.[4] The credit unions studied had overdraft fees in the $25-32 range whereas banks had fees in the $29-35 range.[5] The report also noted that automated transfer fees for credit union overdraft programs with linked checking and savings accounts ranged from $5-8 and were about half of the fees charged by banks for the same service.[6] While the fees levied at banks versus credit unions may appear similar, it's important to keep in mind that credit unions implementation of relief programs and their responsiveness to member requests for assistance are where credit unions often set themselves apart the most.

Overdraft protection programs are subject to substantial regulation and oversight

Credit unions are strong proponents of robust consumer protections, including clear and conspicuous consumer disclosures. CUNA supports the availability of overdraft programs that are "consumer friendly, transparent plans that are not marketed or promoted to members in a misleading or deceptive manner."[7] In this regard, prudent regulations ensuring such transparency are well-established and part of any reputable financial institutions' consumer compliance management system.

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[2] 2022 CUNA National Voter Poll.
[3] *Id.*
[4] *See* Filene Research Institute Report, "Overdraft Protection Programs."
[5] *Id.*
[6] *Id.*
[7] The Compendium of CUNA Policies on Legislative and Regulatory Issues, CUNA (February 2019).

The scope of laws and regulations that currently apply to a depository financial institution's overdraft protection program are extensive:

- The Truth in Lending Act (TILA) and Regulation Z;
- The Truth in Savings Act (TISA) and Part 707 of NCUA's Rules and Regulations;
- The Equal Credit Opportunity Act (ECOA) and Regulation B;
- The Expedited Funds Availability Act and Regulation CC;
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibitions on unfair, deceptive, or abusive acts or practices;
- Laws established by the states applicable to state-chartered credit unions.

While some of these laws only tangentially touch on overdraft programs, many directly impact the consumer experience of overdraft services. For example, the 2009 Overdraft Rule (the rule) amending Regulation E, which implements the Electronic Fund Transfer Act (EFTA), limits the ability of a financial institution to assess overdraft fees unless the consumer affirmatively consents to participating in the overdraft program. While no rule is perfect, credit unions are familiar with these disclosure requirements and have effectively managed their ongoing compliance with the rule. Consumers are primarily made aware of their rights because of these disclosures. In response to a recent statutorily required review of the rule, CUNA called on the Consumer Financial Protection Bureau (CFPB or Bureau) to avoid amending the material provisions of the rule and advised the Bureau to keep in mind the personal choice consumers make when they opt-in to overdraft services for the comfort of knowing transactions, especially necessary or emergency purchases, will be honored.[8] Consumers should always be permitted the right to choose their financial products.

It is critical to bear in mind that credit unions are regularly examined for compliance with the above listed laws and regulations governing overdraft. It is even possible for a state-chartered credit union to be subject to more than one examination in a given year depending on the schedules of their state examiner and the National Credit Union Administration (NCUA or agency). The NCUA recently announced overdraft programs would be a supervisory priority in 2022 and stated credit union examiners will "request information about overdraft policies and procedures, as well as audits of credit union overdraft programs."[9] The information gathered will be used for "a more thorough review of credit unions' overdraft programs in 2023."[10] Clearly, the agency is able to effectively police overdraft programs under the current laws in place and without additional Congressional action. In addition, for entities directly supervised by the CFPB, the Bureau is well-established as a zealous examiner of compliance with the laws in its jurisdiction and nothing about the current state of the law has kept the Bureau from finding and punishing bad behavior in overdraft programs among the nation's largest banks.[11]

Competition and consumer demand have driven market changes for overdraft protection programs

Changes in the competitive landscape of financial services and evolving consumer expectations have led many financial institutions to evaluate and reconsider their approach to overdraft protection and other services. While credit unions often conduct periodic reviews of their overdraft programs to ensure they are competitive with similar financial institutions in their region, an increasing number are exploring new methods to approach their programs and considering new sources of noninterest income.

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[8] Comment Letter to CFPB regarding Overdraft Rule Review pursuant to the Regulatory Flexibility Act, available at https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2019/0701219_2009%20Overdraft%20Rule%20RFA%20Review.pdf (July 1, 2019).

[9] Remarks of NCUA Chairman Todd Harper, 2022 CUNA Governmental Affairs Conference *available at* https://www.ncua.gov/newsroom/speech/2022/honorable-todd-m-harper-chairman-national-credit-union-administration-remarks-cuna-governmental.

[10] *Id.*

[11] *See* Consent Order, *In re* Regions Bank, No. 2015-CFPB-0009 (CFPB April 28, 2015); Consent Order, *In re* Santander Bank, N.A., No. 2016-CFPB-0012 (CFPB July 14, 2016); Stipulated Final Judgement and Order, CFPB v. TCF National Bank, No. 17-cv-00166-PAM-DTS (D. Minn. July 20, 2018); Consent Order, *In re* TD Bank, N.A., No. 2020-BCFP-0007 (CFPB Aug. 20, 2020).

After carefully evaluating the needs of the consumers they serve, many providers have taken proactive steps towards eliminating or making it more difficult for customers to overdraft their accounts. While the changes announced by some of the largest financial institutions have generated the most headlines, credit unions large and small have also responded to this market change by amending their programs as well as eliminating and substantially reducing the cost of overdraft. These changes reflect a healthy system of competition among financial services providers, with the market and consumer choice – not government-mandated bans – being the primary driver. It is not yet clear how these changes will impact the current financial landscape, or how they may factor into longer-term consumer preferences when it comes to banking, but it is a market-driven trend worth paying attention to.

Most importantly, the right of consumers to not only choose their financial institution but also the products and services they use is a pillar of the consumer financial services market and the American economy more broadly. In the overdraft context, consumers are given clear disclosures explaining overdraft protection and the option to choose whether to opt-in to those services or not. The costs of overdraft are not hidden, obscured behind legalese, nor are consumers unaware of the behavior that results in an overdraft: spending more money than one has in one's account. On the average cell phone, dissatisfied consumers have access to more sources of information on the alternative banking options available to them than they ever have in history. As financial institutions review and potentially amend their products and services to meet consumer demands, the market – not restrictive legislation or regulation – is best positioned to determine the future of overdraft protection. To that end, we believe consumers seeking a better banking option will recognize the benefit of credit union membership and join a local credit union, the best financial partner for America's citizens and communities.

Allowing all credit unions to serve underserved areas would improve consumers' financial well-being

We appreciate Congress' concern for the financial well-being of America's consumers, especially low-income consumers. One of the most important things that Congress could do to promote financial inclusion would be to ensure that federal law permits all federal credit unions to serve underserved areas. Under current law, only multiple common bond credit unions are eligible to add underserved areas to their field of membership. In response, CUNA strongly supports H.R., 7003, the *Expanding Financial Access for Underserved Communities Act*, which would allow all federal credit unions to add underserved areas to their field of membership and increase credit unions' ability to serve their community's businesses. Furthermore, the legislation expands the definition of a low-income credit union to include any area that is more than 10 miles from the nearest branch of a financial institution – allowing more credit union to access banking deserts. This legislation is important in the context of policy relating to overdraft protection because it will facilitate credit union membership for many who presently find access to mainstream financial services challenging or nonexistent.

On behalf of America's credit unions and their 130 million members, thank you for holding this important hearing.

Sincerely,

Jim Nussle
President & CEO