



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)

Dear Director Chopra:

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed rule on overdraft lending at very large financial institutions. Inclusiv supports the CFPB's efforts to develop an effective rule to increase transparency and fairness in overdraft pricing. The CFPB's research has shown that a small percentage of account holders, usually people with low incomes and people who live in communities of color, pay the majority of overdraft fees. This pattern can push people out of the mainstream financial system—the FDIC's 2021 National Survey of Unbanked and Underbanked Households found that nearly three out of every ten unbanked households cited bank account fees being too high as a reason they do not have an account<sup>1</sup>—and undermine critical work to advance financial inclusion. The CFPB's proposal to make courtesy overdraft ("overdraft services") provided by institutions with \$10 billion or more in assets subject to Regulations Z requirements, unless the service is provided at cost or at a CFPB-determined benchmark price as a true courtesy to customers, is an effective way to increase transparency and fairness for account holders.

#### *About Inclusiv*

Inclusiv is a Community Development Financial Institution (CDFI) and network of community development credit unions (CDCUs). Our network of 500 CDCUs shares a commitment to financial inclusion and CDCUs' structure as mission-driven, not-for-profit, democratically owned and governed financial institutions ensures their commitment to meeting the financial services and credit needs of the communities they serve. Inclusiv's member CDCUs serve more than 20 million people and hold more than \$295 billion in community-controlled assets. Two-thirds are CDFIs, 30% are Minority Depository Institutions (MDIs) and 21% are cooperativas (financial cooperatives based in Puerto Rico). Inclusiv member CDCUs span a broad range of asset sizes but most (85%) hold less than \$1 billion in assets.

#### *Expanding the Overdraft Rule to Institutions of All Asset Sizes*

The CFPB's proposed approach of initially applying the overdraft rule to institutions with more than \$10 billion in assets and studying the effects of the rule before expanding it to smaller institutions will immediately benefit the majority of account holders without endangering the sustainability of smaller institutions. But all account holders should enjoy the benefits of strong consumer protections, so we encourage the CFPB to work toward extending the rule to cover all institutions over time.

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<sup>1</sup> <https://www.fdic.gov/analysis/household-survey/2021report.pdf>

A tiered implementation timeline is important because many smaller CDCUs are Minority Depository Institutions (MDIs) that serve people and communities of color. These critical community-based institutions are often under-resourced as a consequence of structural racism and other institutional barriers and may not be able to absorb a significant drop in fee income immediately nor do they have the economies of scale enjoyed by larger institutions. They will need time to adjust their product offerings, update their policies and disclosures, and work to diversify their income streams before becoming subject to the rule. The downward pressure on the price of overdraft services from the rule will further encourage institutions not currently subject to the rule to start implementing consumer-friendly changes to their overdraft programs. In addition, when the CFPB extends the scope of the rule to cover smaller institutions, the agency should conduct a careful analysis of whether break-even pricing benchmarks need to change based on asset size to ensure the ongoing viability of these vital institutions.

### *Approaches to Improving Overdraft*

Although relatively few Inclusiv member credit unions will be subject to the proposed rule, many CDCUs have already taken or are currently taking steps to reduce their members' reliance on courtesy overdraft, provide alternative credit products, and/or reduce overdraft fees. Although this work presents challenges for our members in the form of reduced fee income and increased program development costs, they are committed to doing the right thing for their low-income members. We anticipate that many small institutions will work to reduce fees and strengthen consumer protections in their overdraft programs as large institutions begin reducing their overdraft fees as the rule goes into effect.

Inclusiv's members take a wide variety of approaches to providing overdraft services and overdraft lines of credit. Approaches CDCUs have taken to ensure that their members have access to affordable overdraft credit to cover short-term income shortfalls and emergency credit to help ensure they do not turn to predatory online or payday lenders include:

- Lowering their courtesy overdraft fees, typically to \$10 - \$15 from \$25 - \$35.
- Instituting a grace period before any fees are charged to allow members to top up their accounts after an overdraft.
- No longer charging overdraft fees for transactions under a certain dollar threshold, often between \$5 - \$100. It is unfair and inappropriate to charge a substantial fee for a de minimis overdraft amount and setting an overdraft amount threshold below which overdraft fees may not be charged is an effective way to address that issue.
- Creating alternative products for frequent overdraft users. For example, automatically moving heavy courtesy overdraft users into a more affordable line of credit option that is repaid as funds become available, like courtesy overdraft, rather than on a typical line of credit repayment schedule that may not make credit available again as quickly as the member needs it.
- Closing courtesy overdraft program and using only lines of credit and linked accounts to cover account shortfalls. Our members who have taken this approach have been able to provide this type of credit successfully to people with damaged credit histories.

- Offering responsibly underwritten and affordable small dollar loans with a focus on providing decisions on a timeline that makes CDCU loans competitive with the ease and speed of going to a fintech or payday lender—without the predatory terms and debt traps.

#### *Additional Considerations*

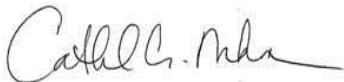
We believe that overdraft services and overdraft lines of credit will continue to be widely available under the new rule despite some industry claims to the contrary, but we encourage the CFPB to closely monitor the ongoing availability of affordably-priced overdraft credit as well as other fees associated with transaction accounts.

In states where payday lending is legal, some borrowers correctly conclude that even high-fee overdraft transactions are a better deal than a payday loan debt trap. With the proposed rule working as intended, these borrowers should have access to more transparent and affordable credit options, including overdraft credit. But, should that not occur, it is important that the CFPB be actively monitoring the market and step in to address any issues.

On the other hand, as the CFPB noted in its Non-Sufficient Funds Fees proposed rule, institutions may look for new opportunities to make up reductions in overdraft fee revenue by assessing new fees that disproportionately harm low-income account holders. Although making up forgone overdraft revenue through increased lending, investment or equitably structured fee income is in many cases appropriate and necessary for the ongoing operation of the institution, the CFPB should keep close watch for unfair fees or fee structures that disproportionately burden low-income people and/or people of color and address those as they arise.

We look forward to supporting the CFPB's efforts to implement a strong and well-designed overdraft rule, and are happy to make ourselves available and to introduce CFPB staff to CDCU leaders to provide input on achieving robust consumer protections that are operationally feasible for small and under-resourced institutions. Please contact Alexis Iwanisziw, Inclusiv's Senior Vice President of Policy and Communications ([aiwanisziw@inclusiv.org](mailto:aiwanisziw@inclusiv.org)), with any questions.

Sincerely,



Cathleen A. Mahon  
President and CEO  
Inclusiv