Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Overdraft Lending: Very Large Financial Institutions, CFPB-2024-0002

The Indiana Community Action Poverty Institute conducts research and policy advocacy focused on promoting the financial well-being of all Hoosiers. We take a special interest in financial practices that disproportionately harm low-income consumers. We support the Consumer Financial Protection Bureau's (CFPB's) proposed rule to restrict overdraft fees, and urge the consideration of additional consumer protections around overdraft fees.

Given that the average overdraft fee of $35 is charged for transactions of $26 or less and repaid within three days, such fees can be considered an under-regulated form of short-term credit, with such "loans" having an APR of over 16,000%. Approximately 23 million households pay overdraft fees in any given year and these fees disproportionately come from low-income consumers: according to research from the non-profit Financial Health Network only 4% of Financially Healthy households with checking accounts reported paying an overdraft or NSF fee in 2022, compared with 46% of Financially Vulnerable households.

The Institute regularly engages with financially vulnerable households as part of our research and advocacy. Nearly one in three working-age households in Indiana lives below the Self-Sufficiency Standard (a metric of poverty that is adjusted for cost of living including basic needs such as childcare), and of this population, 85 percent have at least one household member employed. Like much of America, poverty in Indiana is related to race and gender among other demographics and intersectional identities. Despite working hard, Hoosiers struggle to pay for rent, food, heat, and childcare, among other necessities, and overdraft fees exacerbate this harm by preying on the population already struggling to survive.

Hoosiers (like many Americans) cannot budget banks' excessive overdraft fees into their monthly expenses when they are living paycheck to paycheck. High overdraft fees force consumers to take out additional loans and make them more susceptible to further ensnarement in the financial debt trap. One Indiana complainant who paid multiple overdraft fees over the course of six months wrote that the fees exacerbated their issues with paying rent. In their complaint to the CFPB, this Hoosier articulated a sentiment that many share: "[Banks] take advantage of you at your lowest point and make it even harder to live. I have been playing catch up since [being charged overdraft fees] and I just simply don't make enough at my FULL time job to balance out their extreme overdraft fees." The experience of these fees hitting consumers at their lowest is not a rare one. Many Hoosiers who filed complaints with the CFPB regarding excessive overdraft fees noted recent loss of job, family illness, or other transitory shock that harmed their capacity to refill their bank account. Consumers find banks unsympathetic to their plight and in search of ever-growing profits, levying fee after fee on unsuspecting account holders.

Examining data of CFPB complaints filed by Hoosiers around overdraft fees reveal several common trends. First, overdraft fees often rack up quicker than respondents anticipate, in part as a result of the “reordering” that banks will do of transactions to maximize the number of fees that can be charged. Even individuals who post a payment before making a charge risk having their payment marked as pending until after the charge has gone through, triggering fees. This particularly impacts individuals living paycheck to paycheck, as they often report needing to move money between accounts or deposit cash to ensure sufficient funds for purchases. Disputed and fraudulent transactions still trigger overdraft fees that consumers are responsible for, further harming consumers at their most vulnerable. Couples with joint accounts report being charged twice for a given overdraft fee, since the account has two names on it. Several individuals even reported being charged overdraft fees while they had sufficient funds in their account–and that it was the overdraft fee and subsequent fees that sent them into the negative. One such complainant who had a positive account balance noted in her complaint that “I absolutely take responsibility for cutting it far too close for any error that week, but to be honest, that's what many of us do who are living paycheck-to-paycheck.” Worst of all, when banks are confronted by the CFPB with these harmful practices (or banking errors), consumers often have to file follow-up complaints to receive their owed reimbursements.

Those who file reports with the CFPB are just the tip of the iceberg in terms of negative impacts from overdraft fees. Studies show that individuals of marginalized identities are less likely to engage with institutions and legal services when they encounter wrongdoing, meaning that those who file with the CFPB likely represent the most empowered voices among those harmed by overdraft fees. The issue of time–and resource knowledge–would also serve as impediments to individuals filing complaints, further necessitating the development of a system in which banks are not charging such exorbitant fees in the first place. National Credit Union Administration Chairman Todd M. Harper commented to this effect in remarks to the Indiana Credit Union League, “In my view, overdraft fee programs that allow for authorizing positive and settling negative, permit the charging of multiple representment fees, and incorporate repeated NSF fees are antithetical to the purpose of credit unions, detrimental to members, and inconsistent with the credit union system’s statutory mission of meeting the credit and savings needs of consumers, especially those of modest means.” We agree that the mission of financial institutions should be to meet consumers’ needs, not to exploit them by overcharging in moments of distress.

Hoosiers are particularly vulnerable to these charges, as our legislature recently passed bills SB 188 and HB 1284, which respectively restricted the number of years that Hoosiers can take banks to court for wrongful fees and increased the latitude that banks have to manipulate terms and conditions on accounts to their advantage with insufficient and little notice. Having additional protections at the federal level to restrict overdraft fees would protect low-income Hoosiers across the state amidst the unprecedented surge in bank enfranchisement at the state level. Limits on overdraft fees are needed now more than ever, which is why we firmly stand behind the Consumer Financial Protection Bureau in their regulation of such fees.

As much as we appreciate that the CFPB is taking steps towards limiting the amount that can be charged for overdraft fees, we also would like to push for additional changes and regulations:

- Mandatory, publicly-available data at the state level published by banks who charge overdraft fees. This data should disaggregate the number of overdraft fees by age, race, income bracket, unique accounts (no identifiable information but simply withdrawal from the same account), and gender.
- Future application of the overdraft fee limitation rule to smaller banks and credit unions, which in states like Indiana, hold an outsize proportion of consumers. This would also prevent consumers from being confused about which banks do and do not have this overdraft limit, and ensure that individuals are not entitled to fewer consumer protections simply because they cannot bank with a large national affiliate.
- Clear and consistent regulation on how banks can order charges within a consumer's account to prevent strategic billing to gain additional fees.
- Prompt reimbursement of faulty overdraft charges when an error is made by a bank, when a bank decides to hold a check for longer than the consumer was initially informed, when a bank's app is inaccessible for individuals to transfer funds, or when the bank fails to notify consumers of fund balance (when notifications are enabled).
- Waiving overdraft charges in cases of fraud or identity theft. This practice of continuing to charge victims for their overdraft fees hurts consumers when they are at their most vulnerable after a financial hacking.
- Fines for banks that consistently abuse overdraft practices, resulting in more complaints filed with the CFPB and resources spent recovering wrongfully-charged fees.
- Addition of a good-faith clause to overdraft fees, in which banks cannot assess such fees for their own gain.

We firmly stand against unreasonable overdraft fees and their manipulations as one of many predatory actions that banks take to profit off of struggling Hoosiers.

Signed,

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