



ADVOCACY TOOLKIT

Consumer Financial Protection Bureau – Overdraft Lending: Very Large Financial Institutions

**Take Action
Connect for a
Cause**

**Stay informed
Share your story**



On January 17, 2024, the Consumer Financial Protection Bureau (CFPB) proposed changes to overdraft fee rules for certain financial institutions, including credit unions, aiming to extend consumer credit protections to those exceeding \$10 billion in assets.

Credit unions play a vital role in serving their communities with financial integrity and member-focused services. This call to action presents an opportunity for credit unions to voice concerns and perspectives for this problematic proposed rule.

Using the tool kit from the California and Nevada Credit Union Leagues, credit unions can streamline comment submissions to ensure their voices are heard to shape regulations affecting their operations and members.

We empower California and Nevada credit unions to make a collective impact on collectively influence fair regulations by submitting comments to the CFPB by **April 1**.

This guide includes the following:

- Key takeaways of the proposal and impact on credit unions (page 2)
- Instructions on how to send comment letters (page 3)
- Template Comment Letter – please customize the letter! (Pages 4-5)
- Talking points to consider when crafting your letter. (Page 6)

Key Takeaways of the Proposal

- Covered institutions would be allowed to choose whether to offer overdrafts as a “courtesy overdraft service” or as a line of credit (loan).
- If providing “courtesy overdraft service,” the covered institution must charge a “breakeven” amount for the service, either: (i) its direct costs to provide the service; or (ii) a benchmark fee (in an amount to be determined, either \$3, \$6, \$7, or \$14). (Such an overdraft service is referred to as “breakeven overdraft credit.”)
- The comment period ends on April 1, 2024.
- The CFPB expects that this proposal would take effect in October 2025.

Impact on Credit Unions

If the CFPB's proposal is finalized in its current form, it would bring significant changes to the structure of overdraft courtesy pay fees. Covered credit unions would be required to demonstrate a "break even" point for each transaction involving an overdraft fee or establish a safe harbor overdraft fee ranging from \$3 to \$14 (the specific amount to be determined in the final rule). Given the potential drastic shift in average overdraft fees, maintaining this service could become challenging for credit unions under the proposed rule. This, in turn, might lead to serious consequences for consumers facing a cash shortfall, forcing them to turn to payday lenders for essential purchases. Additionally, although the proposal currently exempts financial institutions with assets less than \$10 billion, the CFPB has hinted at reconsidering this threshold. Therefore, credit unions under this threshold should be attentive to the concerns the CFPB aims to address through this rulemaking.

Draft Comment Letter Template to the Consumer Financial Protection Bureau



Personalizing your letter is key. Use this toolkit to create a personalized comment letter. Provide background information on your credit union and use data to highlight your narrative.

Overview

Here is an outline of the letter:

[Date]

Dear Director Chopra:

- I. **Opening – express urgency and concern**
- II. **Background on organization**
- III. **2-5 main arguments that concern your credit union – support these arguments with tailored data points and descriptions of how your credit union will be impacted.**
- IV. **Conclusion – wrap up message summarizing the top line arguments**

Sincerely,

[Your Name]

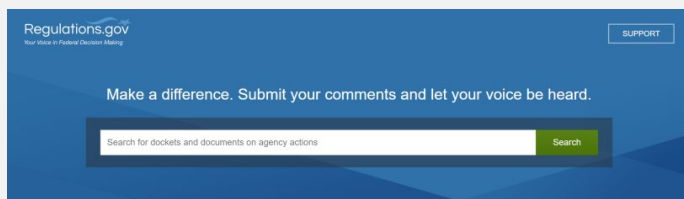
[Your Title]

[Your Signature]

Where to Send Your Letter

Credit unions may submit letters identified by Docket No. CFPB-2024-0002 or RIN 3170-AA42, by any of the following methods. Comment period ends on **April 1, 2025**.

Federal eRulemaking Portal: Follow the instructions for submitting comments.



Mail: Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Email: 2024-NPRM-OVERDRAFT@cfpb.gov. Include Docket No. CFPB-2024-0002 or RIN 3170-AA42 in the subject line of the message.

Sample Letter

[Date]

Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Overdraft Lending: Very Large Financial Institutions Docket No. CFPB-2024-0002

Dear Director Chopra:

I am writing on behalf of [XYZ Credit Union] in response to the notice of proposed rulemaking issued by the Consumer Financial Protection Bureau (CFPB) regarding its efforts to limit overdraft fees for very large financial institutions (an insured depository institution or an insured credit union that has total assets of more than \$10 billion). We have several concerns with this proposed rule and would like to respectfully provide the following comments for your consideration.

Who We Are:

[XYZ Credit Union] is a [describe your asset size] asset credit union, headquartered in [Location]. We serve approximately [Number] members in [list your communities].

Specific Comments Pertaining to the Proposed Rule:

The CFPB contends that consumers will significantly benefit from this proposed rule; however, evidence suggests otherwise, as consumers actively choose to enroll in overdraft programs even after receiving comprehensive, transparent written disclosures of the program. Additionally, contrary to the CFPB's portrayal, overdraft fees are not deemed unfair or deceptive, nor are they labeled as "junk fees."

The proposed rule will have an impact on smaller financial institutions.

By proposing a rule that targets financial institutions with \$10 billion or more in assets, the CFPB is essentially setting an industry standard. Consumers and credit union members will expect the cost of overdraft services at smaller institutions to match that of much larger institutions. When the proposed rule was developed, the CFPB did not take into consideration how the proposed rule would impact smaller financial institutions. While technically exempt from the text of the proposed rule, credit unions and other small financial institutions will feel the impact of this proposed rule. The CFPB should consider how the proposal will impact availability of banking services at smaller financial institutions.

Consumers understand the benefit and value of overdraft.

As indicated above, consumers anticipate these fees, as they voluntarily participate in overdraft protection with clear disclosures and the option to opt out at any time. Before opting in to overdraft protection, we encourage our members to carefully review the terms and conditions associated with the service. This includes understanding the overdraft fees charged by the credit union, any limits on overdraft amounts, and how overdraft transactions are processed.

We urge the CFPB to carefully consider the potential unintended consequences of the proposed changes – particularly for consumers of moderate means.

For many of our members, overdraft protection is not just a convenience but a lifeline, especially for those with low to moderate means or a low credit score. It serves as a crucial emergency safety net, allowing them to cover essential expenses like groceries, gas, utilities, and housing payments. Without overdraft protection, failing to cover these transactions could result in severe consequences such as eviction or force members into seeking more expensive alternatives, such as predatory lenders. 4

Furthermore, restricting access to overdraft protection could force credit unions into a difficult position. If finalized as proposed, a credit union, such as ours, might have to either accept higher risks associated with unchecked overdraft behaviors or eliminate these services altogether. The CFPB's proposal to restrict overdraft fees could lead to reduced access to financial services and increased costs for basic necessities, disproportionately impacting financially vulnerable consumers. Such a move contradicts the objectives of promoting access and inclusion in financial services that regulators, including the CFPB, strive to achieve.

The proposal does not consider key administrative costs.

Credit unions are not-for-profit organizations owned by their members, who are also their customers. Any profits generated by our credit union are returned to our members in the form of lower fees, higher interest rates on savings, or better services. The proposal overlooks the actual administrative costs involved in covering overdrafts and monitoring repayment processes. There are significant expenses associated with opening and servicing accounts in a compliant manner. This includes implementing and maintaining the technological infrastructure necessary to manage our overdraft protection program, as well as analyzing usage patterns, evaluating the impact on our members, and carefully assessing and managing our risks to protect both their own financial stability and the interests of their members.

Outreach to our members is important.

In the interest of protecting our members, our credit union has implemented positive, proactive measures that expand choices, strengthen transparency, and increase affordability for our members. These policies and procedures include: **[CHOOSE THESE SUGGESTED OPTIONS BASED ON YOUR OVERDRAFT PROGRAM POLICIES:** (1) *reducing fees overall*, (2) *reducing fees on small transactions*, (3) *eliminating or reducing fees on transactions resulting in small negative balances*, (4) *eliminating transfer fees*, (5) *automating the fee waiver process*, or (6) *capping the number of instances certain fees can be charged per day or another specified period.*]

Furthermore, our policies and procedures are aimed at assisting members that frequently incur overdraft fees. When our credit union becomes aware of a member's frequent overdraft usage, we often attempt to contact the member to address their financial situation and offer financial education support or alternative credit products tailored to their unique needs. This proactive approach exemplifies the pro-consumer nature of the credit union-member relationship, which distinguishes it within the financial services industry.

Conclusion:

I appreciate your consideration of our views on this critical matter. The proposed rule has the potential to undermine the vital role credit unions play in providing affordable and accessible financial solutions to our members. I urge you to consider a fair and balanced solution that addresses the unique challenges faced by credit unions in today's financial landscape.

Sincerely,

[Your Name]

[Your Title]

[Your Signature]



What is Overdraft Protection?

Talking Points for Communicating with Consumers, the Public, Regulators, and News Media

- As a convenience and benefit, credit union overdraft protection is a service many credit unions provide to ensure consumer transactions are covered if they do not have sufficient funds in a checking account.
- At the member's discretion and approval, a credit union will automatically transfer available funds from another linked deposit or lending account to the "overdrawn" checking account in real-time when that member is purchasing groceries, gas, or another household item and needs those funds immediately.
- Credit union overdraft protection is critical for members facing unexpected or unplanned circumstances, providing a vital safety net. It's one additional tool credit unions use to empower consumers to manage their finances and meet their immediate financial needs.
- Consumers must opt-in to credit union overdraft protection services, and only those who use it pay for it. Without this choice, consumers are more likely to turn to predatory lenders. Many credit unions are continually adapting overdraft programs to secure the financial wellbeing of their members and community, including:
 - **Reducing fees on small transactions.**
 - **Adding credit cards to the range of linked-account options.**
 - **Eliminating transfer fees.**
 - **Reducing transaction fees that result in a negative balance.**
 - **Automating a fee waiver process.**
- Consumers turn to credit union overdraft protection as a flexible option during times of financial distress. Protection is a helpful safety net that consumers choose to use — and can count on — as a safeguard and convenience. Their alternatives may be high-interest, predatory payday lenders or other underregulated creditors.
- Any legislative or regulatory restrictions would inhibit the ability of credit unions to help members resolve short-term financial difficulties.

The material in this publication is provided for educational and informational purposes only, and does not constitute legal or financial advice. Use of any material or information in this publication should never be a substitute for seeking the advice of an attorney or a certified public accountant.