



March 14, 2024

The Honorable Steven Bradford
Member, California State Senate
1021 O Street, Suite 7210

RE: Senate Bill 1075: Credit Unions: overdraft and nonsufficient funds fees. - Oppose

On behalf of our approximately 220-member credit unions and their nearly 13 million members, the California Credit Union League (CCUL) must oppose SB 1075 due to its premature timing and the negative impact it will have on credit union members. SB 1075 imposes stringent requirements on how state-chartered credit unions serve their members that utilize overdraft services by limiting the number of overdraft and nonsufficient fund (NSF) transactions to three per month and mandating a five-day waiting period before a fee can be assessed. The former will significantly affect how credit union members manage their finances, while the latter may face challenges due to federal preemption.

Credit unions, as not-for-profit member owned cooperatives, were established over 100 years ago to provide financial services to those overlooked by traditional lenders. Even today, credit unions specialize in serving the underserved, with nearly half of the state's credit unions categorized as low income designated and many as Community Development Financial Institutions (CDFIs).

Overdraft services were introduced with this mission in mind, aiming to assist credit union members in accessing funds they lacked in their accounts. Members opt-in to utilize these services as a financial tool, often relying on them in crucial situations. The story of why overdraft courtesy pay matters is best understood through the experience of those who use it most. When asked, consumers who frequently utilize overdraft services—some exceeding eight times a year—shared stories of leveraging it after medical emergencies, to meet essential expenses during tough times, and to bridge financial gaps when payments are delayed. It's essential to highlight that consumers must opt into courtesy overdraft per federal Electronic Funds Transfer Act and Regulation E (12 CFR 1005.17). Consumers should have the opportunity to choose which financial services to utilize that best suit their needs. SB 1075 limits a consumer's access to a financial tool that continues to be desired among credit union members.

SB 1075's timing appears to be premature given that the Consumer Financial Protection Bureau (CFPB) issued a proposed rule in January of 2024 regarding courtesy overdraft that would provide two options for very large financial institutions. The options would be to, "determine



the amount of the fee they need to charge to break even using the breakeven standard” or to charge a benchmark fee. The benchmark fee could range from \$3-\$14 and we are still awaiting the final dollar amount. It is difficult to have a conversation about the policy in SB 1075 when there is such a robust conversation occurring federally that will have downward price pressure on the product, and thus the institution, that we will not know until the rule is finalized. SB 1075 cannot be viewed in a vacuum; the legislature must stop and consider the potential ramifications to both the institution and the member. It is crucial to recognize that the CFPB’s proposal applies primarily to institutions with assets over \$10 billion, including some credit unions. However, institutions not falling under this category may perceive the proposed rule as an industry standard, with some preemptively opting for a benchmark fee. This perceived standardization is driven by competitive forces and a desire to mitigate potential litigation risks. Thus, SB 1075 cannot be considered in isolation, and policymakers must carefully weigh its potential ramifications for both institutions and their consumers amidst this broader context.

In addition to the proposed price ceiling rule, the CFPB issued guidance in 2022 cautioning financial institutions against “surprise overdraft fees” for authorize positive settle negative (ASPN) transactions¹. Attorney General Bonta echoed a similar warning just weeks ago. Moreover, the CFPB recently released another draft regulation relating to NSF, which would prohibit financial institutions from charging NSF fees on transactions declined either instantaneously or near-instantaneously. These developments exemplify the ongoing efforts to address issues related to overdraft and NSF services.

SB 1075 requires the credit union to provide a member with at least five business days before requiring payment of a fee to give the member an opportunity to repay the amount that triggered the fee. CCUL believes there is a potential conflict with federal law in this provision, as it fundamentally alters how courtesy overdraft functions. Regarding the potential federal preemption, Regulation Z 12 CFR §1026.28(a)(1) states: *"A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item."* Furthermore, E 12 CFR §1005.17 requires a consumer’s affirmative consent before an overdraft fee may be assessed on ATM and one-time debit transactions. However, SB 1075 would prohibit credit unions from assessing a fee for which members have previously given affirmative consent unless additional disclosure requirements are met. This is arguably preempted based on conflict. Additionally,

¹ Consumer Financial Protection Bureau Consumer Financial Protection Circular 2022-06: Unanticipated Overdraft Fee Assessment (October 2022) available at: https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.



the five-day period is notably lengthy, representing half a pay period to those that get paid biweekly or an entire pay period for those that get paid weekly.

Limiting transactions will likely have unintended consequences on credit union members, particularly for members of moderate means. As stated above, when asked about courtesy overdraft, credit union members view it as a means to manage their finances effectively. They prefer paying the overdraft fee to cover expenses like gas or groceries as opposed to bouncing a rent check or missing other payments, which could incur larger fees. Without adequate overdraft protection, or if it's significantly restricted, failing to cover these transactions could result in severe consequences, potentially forcing members to resort to more expensive alternatives, like predatory lenders.

Furthermore, restricting access to overdraft protection could force credit unions into a difficult position. If this bill advances, credit unions might face a difficult choice: accepting increased risk associated with unchecked consumer overdraft behaviors or, more likely, being compelled to discontinue or scale back on consumer-friendly products such as free checking accounts. This restriction could result in reduced access to financial services and higher costs for basic necessities, disproportionately impacting financially vulnerable consumers. Such actions would contradict the objectives of promoting access and inclusion in financial services that many policymakers and regulators strive to achieve.

In the interest of protecting credit union members, credit unions have implemented positive, proactive measures that expand choices, strengthen transparency, and increase affordability for their members. Across the industry, many credit unions have taken steps to: (1) reduce fees overall, (2) reduce fees on small transactions, (3) eliminate or reduce fees on transactions resulting in small negative balances, (4) eliminate transfer fees, (5) automate the fee waiver process; and/or or (6) cap the number of instances certain fees can be charged per day or another specified period.

Additionally, credit unions are focused on assisting members that frequently incur overdraft fees. When a credit union becomes aware of a member's frequent overdraft usage, the credit union may attempt to contact the member to address their financial situation and offer financial education and/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.

For the reasons listed above, CCUL must oppose SB 1075 and we urge the legislature to allow the process at the Consumer Financial Protection Bureau to play out before continuing



conversations on courtesy overdraft or nonsufficient fund transactions. If you have any questions regarding the California Credit Union League's position, please contact Robert Wilson at (916) 325-1366 or Robertw@ccul.org.