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National Association of Federally-Insured Credit Unions

March 30, 2022

The Honorable Ed Perlmutter
Chairman
Financial Services Subcommittee on
Consumer Protection & Financial Institutions
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Financial Services Subcommittee on
Consumer Protection & Financial Institutions
U.S. House of Representatives
Washington, DC 20515

Re: Hearing Entitled: “The End of Overdraft Fees? Examining the Movement to Eliminate Fees Costing Consumers Billions”

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) regarding tomorrow’s hearing on overdraft fees. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 million consumers with personal and small business financial service products. NAFCU and its member credit unions support fair, transparent, and competitive markets for consumer financial services and look forward to working with you to improve consumers’ understanding of these products but caution that any legislative efforts that eliminate overdraft protection programs are likely to have a significant negative impact on borrowers who value these programs and are working to improve their financial well-being. It is inappropriate to intervene in market forces that are already leading many credit unions and other financial institutions to reduce, limit, or eliminate overdraft and non-sufficient funds (NSF) fees.

Credit union members who choose to use a courtesy pay or overdraft protection program do so willingly and with full disclosure of the program’s costs and features. Rules for overdraft programs, originally issued by the Federal Reserve and now under the purview of the Consumer Financial Protection Bureau (CFPB or Bureau), made them something that consumers must opt in to. This opt-in requirement gives consumers control and the overdraft rule’s notice requirements have helped consumers to better understand the cost of overdraft programs.

In 2009, former House Financial Services Committee Chairman Barney Frank (D-MA) even recognized the importance of an opt-in regime and how consumer choice should trump legislation in this area when he said:

We wouldn’t, I believe, be in a situation where we are talking about legislation if you would have had an opt-in regime from the beginning.¹

¹ U.S. Congress, House, Committee on Financial Services, *The Overdraft Protection Act of 2009*, 111th Congress, 1st session, October 30, 2009, p. 5.

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While the CFPB recently released two reports on the topic, the underlying assumptions about the impact of overdraft fees was flawed and the data the Bureau relied upon was stale—overdraft and NSF programs and the market overall have changed significantly since the time period evaluated in the credit union-specific report. The Bureau recently compared these fees to resort fees, to which they bear no resemblance, and seemingly forgot these programs are subject to federal and state laws and regulations. Consumers affirmatively opt in to overdraft and courtesy pay programs and appreciate the protection they provide. If these programs were removed, this would lead to an increase in declined debit transactions and bounced checks, which would lead to negative credit reports and more consumer harm and confusion.

As Congress examines this issue, credit unions urge lawmakers to keep in mind:

- Surveys done by credit unions of their members have shown that they highly value the protection and peace of mind courtesy pay programs provide and the assurance that their transaction will go through at the point of sale.
- NAFCU surveys have found that a vast majority of credit unions report offering specialized intervention and financial education for those who frequently use courtesy pay programs, to ensure that consumers are not overly reliant on these programs and are able to improve their financial health.
- Many credit unions already do not assess fees when an account is overdrawn by a *de minimis* amount and some place caps on the total number of NSF fees that can accumulate in a given period.
- A majority of credit unions also report that they routinely waive fees when a member incurred the overdraft on accident and requests a fee waiver.

Recent trends in the market and the growth of new technologies have led to an evolving marketplace and consumer options regarding overdraft protection and courtesy pay programs. NAFCU believes that the best option for policymakers is to let the market for these programs evolve without artificial government intervention to stymie consumer choice. If policymakers are concerned about consumer information, the focus should be on increasing educational resources for consumers and improving consumer disclosures with these programs, not eliminating these programs altogether.

We thank you for the opportunity to share our thoughts in advance of tomorrow's hearing. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Associate Director of Legislative Affairs, at lplush@nafcuhq.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Subcommittee on Consumer Protection and Financial Institutions