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April 8, 2025

BY EMAIL AND U.S. MAIL

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
568 Cannon House Office Building
Washington, DC 20515

The Honorable Steve Scalise
Majority Leader
U.S. House of Representatives
266 Cannon House Office Building
Washington, DC 20515

The Honorable Hakeem S. Jeffries
Minority Leader
U.S. House of Representatives
2267 Rayburn House Office Building
Washington, DC 20515

The Honorable J. French Hill
Chairman of the Financial Services Committee
U.S. House of Representatives
1533 Longworth House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member of the Financial Services Committee
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, DC 20515

Re: House Joint Resolution 59 Overturning CFPB Final Rule on Overdraft Fees

Dear Speaker Johnson, Leader Scalise, Leader Jeffries, Chairman Hill, and Ranking Member Waters,

We, the undersigned attorneys general for 22 states and the District of Columbia and the Executive Director of Hawaii’s Office of Consumer Protection, write to urge you and all members of the House of Representatives to vote against House Joint Resolution 59 (the “Resolution”) overturning the 2024 final rule issued by the Consumer Financial Protection Bureau entitled “Overdraft Lending: Very Large Financial Institutions” (89 Fed. Reg. 106768 (Dec. 30, 2024), the “Rule”). The Rule reasonably limits allowable overdraft fees charged by very large banks. Nevertheless, on March 27, the U.S. Senate narrowly passed its version of the Resolution (S.J. Res. 18) by a vote of 52-48, with Republican Senator Josh Hawley joining Senate Democrats to vote against it. If it survives, the Rule will go into effect in October 2025.

President Trump has promised to “defeat the cost-of-living crisis” and to make life for Americans affordable.¹ Passing the Resolution would do the opposite. At issue is the billions of dollars in profits that the largest U.S. banks generate by charging onerous fees whenever customers overdraft their accounts. Banks that offer “overdraft protection” – that is, cover charges that overdraft customers’ accounts – often impose fees that average around \$35 for each such overdraft. These fees are assessed even where the overdraft is minimal. For instance, many consumers have reported paying overdraft charges of over \$30 after purchasing a \$5 cup of coffee using a debit card.²

Overdraft fees are effectively extremely high-interest loans. The majority of overdrafts are for less than \$26 and are repaid within three days. That means overdraft protection with a typical \$35 fee amounts to a loan with a 16,000% APR.³ Unsurprisingly, these fees are a major source of profits for banks, generating \$5.8 billion in revenue in 2023.⁴ Banks frequently, and

¹ The White House, *Fact Sheet: President Donald J. Trump Delivers Emergency Price Relief for American Families to Defeat the Cost-of-Living Crisis* (2025), available at <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-delivers-emergency-price-relief-for-american-families-to-defeat-the-cost-of-living-crisis>.

² CFPB, *Consumer Experiences With Overdraft Programs* (2022), available at <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-consumer-experiences-with-overdraft-programs/full-report>; CFPB, *Prepared Remarks by Richard Cordray at the CFPB Roundtable on Overdraft Practices* (2012), available at <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-at-the-cfpb-roundtable-on-overdraft-practices>; Herb Weisbaum, *\$38 for a Cup of Coffee? Use Debit Card Wisely*, NBC News (Mar. 25, 2009), available at <https://www.nbcnews.com/id/wbna29879567>.

³ CFPB, *Fact Sheet: The CFPB’s Proposed Rule to Curb Excessive Fees on Overdraft Loans by Very Large Banks and Close a Decades-Old Loophole* (2024), available at https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_fact-sheet_2024-01.pdf.

⁴ CFPB, *Data Spotlight: Overdraft/NSF Revenue in 2023 Down More Than 50% Versus Pre-Pandemic Levels, Saving Consumers Over \$6 billion Annually* (2024), available at <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually>. The \$5.8 billion figure represents a combination of overdraft fees and non-sufficient funds (NSF) fees, which are charged when customers overdraft their account and the bank does not cover the overdraft. But

sometimes misleadingly, push “overdraft protection” on their customers to juice these profits.⁵ Illustratively, the CEO of a bank sued by the CFPB for such abuses named his boat the “Overdraft.”⁶

The historical roots of overdraft fees present a stark contrast to their current status as profit drivers. Decades ago, when bank account withdrawals were generally made in person or via paper check, banks would sometimes, and as a discretionary courtesy to their customers, cover inadvertent overdrafts and honor checks rather than allowing them to “bounce.” In 1969, the Federal Reserve Board, in regulations implementing the Truth in Lending Act (“TILA”), exempted fees charged for such courtesy coverage from the disclosures necessary under TILA.⁷ But since then, debit card transactions have become far more prevalent than checks, drastically increasing the number of transactions triggering overdraft fees, even as debit card transactions typically involve smaller amounts than checks.⁸ Paradoxically, as the average overdraft has decreased, overdraft fees have massively increased.⁹ The typical \$35 overdraft fee far exceeds the cost to banks of covering the overdraft and often exceeds the amount of the transaction that triggered the overdraft in the first place.¹⁰ Moreover, banks may manipulate the timing of deposits and withdrawals to maximize fees, charging customers even when they have enough money for an approved transaction.¹¹ By creating hurdles to maintaining a positive account balance, overdraft fees also contribute to involuntary account closures, thereby driving consumers out of the banking system altogether and damaging their credit.¹²

The CFPB’s Rule would keep these often abusive fees in check. For the very large banks to which it applies (those with over \$10 billion in assets), the Rule would cap overdraft fees at \$5 or, alternatively, the amount that would cover the bank’s actual costs from providing overdraft

because NSF fees have largely been eliminated, the figure “can be largely attributed to overdraft revenue alone.” *Id.* As the title of this CFPB Data Spotlight indicates, the \$5.8 in revenue attributable to overdraft fees actually represents a significant reduction, from about \$11-12 billion in 2019, a reduction brought about by the CFPB’s regulatory and enforcement efforts. *See id.*

⁵ *See CFPB Fact Sheet, supra* note 3, at 2.

⁶ *Id.*

⁷ 34 FR 2002, 2004 (Feb. 11, 1969).

⁸ CFPB analysis of account data from large banks showed that approximately 10% of debit transactions occur by check while over 60% occurred by debit card. CFPB, *Data Point: Checking Account Overdraft*, at 17 (2014), available at https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

⁹ A 1976 survey of banks in Washington D.C. and New York found a median fee of \$5, with some banks charging nothing. *See Consumers Guide to Banking: Staff Report on Commercial Bank Charges in the New York and Washington, D.C. Metropolitan Area*, S. Comm. on Banking, Hous. and Urban Affairs, 94th Cong. 10-11 tbl.3 (1976).

¹⁰ Center for Responsible Lending, *Overdraft Fees, Banks Must Stop Gouging Customers During the Covid-19 Crisis*, at 1-2 (2020), available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf>.

¹¹ *See id.* at 2.

¹² *See id.* at 3.

protection. Such modest fees would accord with the banking industry’s claim that it is simply providing a convenient accommodation for its customers. If a bank instead wanted to generate profits from covering overdrafts, it would be required to treat the coverage as a loan, with any fees treated as interest and with requisite disclosures under TILA.

The arguments that have been made in favor of discarding the Rule don’t add up. The banking industry claims that, without the ability to extract profits through exorbitant fees, the convenience of overdraft protection would disappear. But many banks – including Citigroup, Capital One, and Ally Bank – have already eliminated overdraft fees altogether, while still providing overdraft protection. Another argument, made for example by Senator Tim Scott, who introduced the Resolution in the Senate, is that limiting overdraft fees would somehow deprive consumers of options and choice.¹³ In fact, in the vast majority of instances, consumers do not incur these fees by choice: according to the CFPB’s survey, only 22% of households expected their most recent overdraft.¹⁴

The Rule, if allowed to take effect, will save Americans struggling with high prices billions of dollars each year by preventing the largest banks from exploiting their customers with burdensome overdraft fees. As Senator Hawley correctly asked, “Why would we help the big banks at the expense of working people?”¹⁵ We urge the House to protect its constituents’ pocketbooks by voting “no” on the Resolution and preserving the CFPB’s overdraft rule.

Respectfully Submitted,



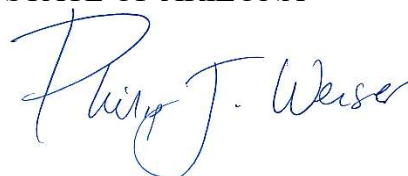
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¹³ Dan Ennis, “Senate Votes to Overturn CFPB Overdraft Rule,” *Banking Dive* (Mar. 28, 2025), available at <https://www.bankingdive.com/news/senate-vote-overturn-cfpb-overdraft-rule-5-dollar-cap-fee-scott-trump/743829>.

¹⁴ CFPB, *CFPB Issues Report Showing Many Americans Are Surprised by Overdraft Fees* (2023), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-report-showing-many-americans-are-surprised-by-overdraft-fees>.

¹⁵ Eleanor Mueller, “Breakaway Lawmakers Puncture GOP’s United Front,” *Semafor* (Mar. 28, 2025), available at <https://www.semafor.com/newsletter/03/28/2025/semafor-principals-republican-resistance>.



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