



April 1, 2024
Comment Intake—2024 NPRM Overdraft.
c/o Legal Division Docket Manager
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

**RE: Overdraft Lending: Very Large Financial Institutions (Docket No. CFPB–2024–0002)
Acknowledgment of CFPB’s Intent and Credit Union Positioning**

Dear Director Chopra,

The Dakota Credit Union Association (DakCU), on behalf of its member credit unions across North and South Dakota appreciates the Consumer Financial Protection Bureau’s efforts (CFPB) to amend Regulations E and Z with the aim of protecting consumers from overdraft fees.

While we recognize and appreciate the Bureau's intention, it is imperative to underscore the unique position and foundational role of credit unions within this landscape. Credit unions, distinct from larger banking conglomerates, operate as not-for-profit, member-centric organizations. Our mission transcends the mere provision of financial services; we are deeply embedded in our communities, dedicated to fostering financial well-being, education, and inclusion among our members.

The proposed regulatory changes, while well-intentioned, pose significant operational challenges and potential adverse impacts on the very communities we serve. Credit unions in the Dakotas are characterized by their commitment to providing accessible, affordable, and equitable financial services. It is within this context that we advocate for a regulatory framework that, while advancing consumer protection goals, also preserves the capacity of credit unions to continue their mission without undue burden.

As we delve deeper into the implications of this proposed rule, we urge the CFPB to consider the distinctive nature of credit unions and the vital services they provide to their communities. A one-size-fits-all approach to regulation may not adequately account for the nuanced differences between large financial institutions and member-driven credit unions. Therefore, a more tailored approach is necessary to ensure that credit unions can continue to operate effectively within their community-oriented framework, promoting financial health and stability among their members.

DakCU supports a balanced regulatory approach that protects consumers while supporting the invaluable contributions of credit unions.

Executive Summary



The Dakota Credit Union Association (DakCU), representing 65 credit unions across North and South Dakota, submits this comment letter in response to the Consumer Financial Protection Bureau's (CFPB) proposed amendments to Regulations E and Z concerning overdraft fees. While DakCU appreciates the CFPB's commitment to consumer protection and the efforts to mitigate the financial burden of overdraft fees, it is crucial to highlight the unintended consequences that such regulations may have on credit unions and their members. This executive summary outlines DakCU's key concerns, proposed solutions, and a call to action.

Key Concerns:

1. **Unique Role of Credit Unions:** Credit unions serve as not-for-profit, community-focused financial institutions, distinct from the "very large" financial entities targeted by the proposed rule. Their mission to promote financial wellness and inclusion necessitates consideration for exemptions.
2. **Impact on Financial Inclusion:** The proposed rule may inadvertently hinder credit unions' efforts to provide financial services to underserved populations, affecting those most in need of affordable banking alternatives.
3. **Operational Challenges and Ecosystem Impact:** The rule poses significant operational challenges for credit unions, especially smaller ones, which make up over 65% of credit unions in the Dakotas and threatens to reshape the financial services ecosystem, potentially leading to consolidation and reduced access to community-based financial services.
4. **Educational and Empowerment Approach:** DakCU advocates for the effectiveness of financial literacy and empowerment strategies over restrictive measures, citing the success of credit unions' educational initiatives in improving members' financial decision-making.

Proposed Solutions:

1. **Exemptions for Credit Unions:** DakCU advocates for specific exemptions from the proposed rule for credit unions, recognizing their unique role and contribution to financial inclusion.
2. **Enhanced Education Efforts:** A partnership with the CFPB to bolster financial education initiatives could empower consumers to manage their finances better, reducing reliance on overdraft services.
3. **Collaborative Engagement:** DakCU calls for ongoing dialogue between the CFPB, credit unions, and other stakeholders to ensure that future regulations are informed by a comprehensive understanding of the financial landscape and the needs of consumers.

DakCU urges the CFPB to reconsider the proposed rule in light of the concerns outlined, recognizing the potential adverse effects on credit unions and their mission. We advocate for a regulatory framework that supports consumer protection while allowing credit unions to continue their crucial work in promoting financial inclusion and education. DakCU is committed to collaborating with the CFPB and other stakeholders to achieve these objectives, fostering a financial ecosystem that is inclusive, resilient, and supportive of all communities.



Impact on Financial Inclusion

The proposed amendments to Regulations E and Z concerning overdraft fees, while aiming to protect consumers, could inadvertently hinder the efforts of credit unions towards fostering financial inclusion. Credit unions, especially those within the Dakotas, have historically served as gateways to the financial system for individuals and families who might otherwise remain on the periphery. Our member-centric model allows us to tailor services to meet the unique needs of our communities, including those living in rural areas, low-income families, tribal communities, and individuals with limited access to traditional banking services.

Credit unions in our region have undertaken innovative programs to support our members in times of financial need, thereby avoiding the pitfalls of overdraft fees. For example, one of our member credit unions launched a small-dollar loan program as an alternative to overdraft fees. This program not only provides immediate financial relief but also incorporates financial counseling to address the root causes of financial instability among members. Such initiatives underscore our commitment to financial inclusion and the well-being of our members, beyond mere transactional relationships.

Furthermore, credit unions have been instrumental in reaching out to marginalized communities, offering programs such as no-fee checking accounts and financial literacy workshops tailored for newly resettled refugees. These efforts not only facilitate financial inclusion but also empower individuals with the tools and knowledge necessary for financial independence.

The imposition of restrictive overdraft fee regulations, without considering the unique role and contributions of credit unions, risks undermining these and similar initiatives. It may limit our ability to offer flexible, supportive alternatives to overdraft fees, thereby affecting the very individuals and communities that stand to benefit most from our services.

Therefore, as we consider the broader implications of the proposed rule, it is crucial to recognize the potential impact on financial inclusion efforts. Regulations must be designed with an understanding of the diverse banking landscape and the pivotal role credit unions play in promoting financial health and inclusion. DakCU urges the CFPB to consider exemptions or tailored approaches for credit unions to ensure that our ability to serve as lifelines for financially underserved populations remains unhampered.

Operational Challenges and Broader Ecosystem Impact

The proposed rule on overdraft fees presents not only direct operational challenges for credit unions but also has the potential to impact the broader ecosystem within which we operate. Credit unions, particularly smaller ones in the Dakota region, are deeply integrated into their communities, offering a range of financial services designed to meet the specific needs of their members. The operational flexibility to provide these services, including overdraft protection, is essential to our mission.



Operational Challenges: Smaller credit unions face significant operational challenges in adapting to new regulatory requirements. Our institutions typically operate with limited resources, and the costs associated with compliance can be disproportionately high. For example, the need to overhaul systems for tracking and managing overdraft fees can divert resources from critical member services. These operational hurdles not only strain our financial and human resources but also detract from our primary mission of serving our members.

Broader Ecosystem Impact: Beyond the operational challenges, the proposed rule threatens to alter the financial services ecosystem, particularly affecting the smaller credit unions that are the lifeblood of many Dakota communities. The potential reduction or elimination of overdraft protection services, driven by regulatory constraints, could force our members to seek alternative, often less favorable, financial products. This shift could inadvertently expose them to higher costs and greater financial vulnerability, undermining efforts to promote financial stability and inclusion.

Furthermore, the competitive landscape could be reshaped to the detriment of smaller credit unions. As larger institutions adjust to the rule, smaller credit unions may struggle to remain competitive, potentially leading to consolidation or closure. Such outcomes would diminish the diversity and resilience of the financial services sector, leaving many communities underserved.

Evidential Concerns: Surveys among our member credit unions reveal apprehension about the proposed rule's impact. Many fear they will need to significantly alter or cease offering overdraft protection, affecting their operational viability and, crucially, their ability to serve their members' needs. This concern is not theoretical but grounded in the practical realities of serving diverse and often underserved populations.

In light of these considerations, DakCU respectfully requests that the CFPB carefully assess the operational challenges and broader ecosystem impacts of the proposed rule. It is essential to ensure that regulations do not inadvertently harm the very institutions that play a crucial role in advancing financial inclusion and community well-being. We advocate for a regulatory approach that recognizes the unique challenges and contributions of credit unions, allowing us to continue serving our members effectively.

Reinforcing Educational and Empowerment Principles Through Direct Action

DakCU has always stood firmly on the premise that true financial wellness and consumer protection are best achieved through education and empowerment rather than imposing restrictive regulatory barriers. This philosophy is not merely theoretical but is practiced daily by our member credit unions, as evidenced by the proactive measures taken to manage and mitigate the impact of overdraft fees on consumers.

Direct Intervention and Communication: A Definitive Path to Financial Autonomy



In March 2021, in the face of burgeoning regulatory scrutiny on overdraft fees, one of our member credit unions launched a groundbreaking initiative that didn't just challenge the status quo—it shattered it. This wasn't a mere adjustment to policy or a superficial nod to consumer protection. It was a bold reimagining of what it means to truly support and empower our members in managing their financial lives.

Let's set the record straight: "Our Overdraft services are not an On/Off switch. The notion that members can simply opt in or out at will is a gross oversimplification of the complex financial realities they face. Our approach has been unequivocally proactive, aimed at educating members on navigating overdrafts amidst the increasing regulatory scrutiny these fees attract," states the credit union, cutting through the regulatory noise with clarity and purpose.

This initiative transcends traditional banking practices by initiating a genuine dialogue, offering pragmatic solutions, and, most critically, empowering members to reclaim control over their financial health. "Integral to account opening and subsequent overdraft discussions, we lay out a roadmap of options to avoid these fees, from overdraft lines of credit to automatic transfers and personalized financial counseling. This isn't just about offering alternatives; it's about fostering financial literacy and resilience," the credit union explains.

The tangible impact of this direct engagement is undeniable. Of the 152 members initially engaged for excessive overdrafts, 77 have since navigated away from the precipice of recurring fees—a testament to the initiative's success. "That's a success rate exceeding 50%. This is not merely a statistical victory but a real win for our members, demonstrating a significant shift towards sustainable financial practices," the credit union emphasizes, showcasing the transformative power of their approach.

Evidencing Success and Advocacy Through Best Practices

Our member credit union's strategy to monitor and mitigate excessive overdrafts serves as a beacon of effective advocacy in action. By proactively reaching out to members at critical junctures—first at 20 overdrafts with educational outreach and escalating intervention at 40 overdrafts—we're not just responding to financial missteps; we're preempting them.

This strategy underscores a profound commitment to not just financial stability but financial empowerment. "The overwhelming success of our engagement—where a significant portion of members have not only reduced but effectively managed overdraft occurrences—challenges the narrative that heavy-handed regulation is the sole path to consumer protection," the credit union boldly asserts.

A Call to Reimagine Regulatory Engagement

The undeniable success of these educational initiatives and direct intervention strategies demands a reevaluation of regulatory approaches. It's a clarion call for empowerment over restriction, for nuanced support over broad-brush penalties.



We challenge the CFPB to recognize the value of these educational and empowerment strategies. Regulatory measures that genuinely support and enhance these efforts will far surpass the efficacy of imposing broad restrictions. "We urge a regulatory recalibration—one that not only acknowledges but champions the critical role of financial education and member empowerment in fostering long-term financial wellness," advocates the credit union.

As the Dakota Credit Union Association, a more informed and financially autonomous membership, our call to the CFPB is unequivocal: embrace the demonstrable success of our credit unions in achieving real consumer protection through education and direct engagement. Let's collaborate to develop regulatory frameworks that amplify these successes, ensuring a financial services landscape that is equitable, inclusive, and genuinely supportive of consumer welfare.

Exemptions, Education, Collaboration

As we navigate the complexities of the proposed amendments to Regulations E and Z regarding overdraft fees, it is essential to align the objectives of the Consumer Financial Protection Bureau (CFPB) with the operational realities of credit unions. DakCU believes that through a combination of exemptions, enhanced education efforts, and collaborative engagement, we can achieve a regulatory framework that not only protects consumers but also supports the vital role of credit unions in promoting financial wellness. Herein, we propose several solutions aimed at reconciling these goals.

Exemptions for Credit Unions: Given the not-for-profit, member-focused nature of credit unions, DakCU advocates for specific exemptions from the proposed overdraft rule for credit unions. These exemptions would recognize the intrinsic difference between credit unions and the "very large" financial institutions targeted by the rule. Such a tailored approach would enable credit unions to continue providing crucial financial services, including overdraft protection, without imposing undue burdens that could detract from their mission of serving members.

Enhanced Education Efforts: DakCU and its member credit unions are committed to financial education as a core component of member service. We propose a partnership with the CFPB to develop and disseminate comprehensive financial literacy programs that extend beyond the credit union membership to the broader public. This initiative could leverage the CFPB's resources and credit unions' community reach to enhance the financial literacy of all consumers, empowering them to make informed decisions and minimize reliance on overdraft services.

Collaborative Engagement: Recognizing the importance of stakeholder input in crafting effective regulations, DakCU encourages the establishment of a formal framework for ongoing dialogue between the CFPB, credit unions, and other relevant stakeholders. This collaborative engagement would ensure that the unique perspectives and experiences of credit unions are considered in the regulatory process, leading to outcomes that are beneficial for both consumers and financial institutions.



By adopting these proposed solutions, we can create a regulatory environment that supports the financial health and stability of all consumers, particularly those served by credit unions. Exemptions would ensure that credit unions can continue their mission without undue interference; education initiatives would empower consumers to make better financial decisions, and collaborative engagement would ensure that future regulations are informed by a comprehensive understanding of the financial landscape.

DakCU is committed to working with the CFPB and other stakeholders to achieve these objectives, fostering a financial ecosystem that is inclusive, resilient, and responsive to the needs of all its participants.

Conclusion

As we reflect on the discussions presented by DakCU regarding the Consumer Financial Protection Bureau's (CFPB) proposed amendments to Regulations E and Z, it's clear that while the intention behind these regulations is commendable, their implementation without consideration for the unique role of credit unions could have unintended negative consequences. Credit unions are foundational to their communities, offering not just financial services but education, support, and empowerment to their members.

Throughout this commentary, we've outlined several critical areas of concern:

1. The unique positioning of credit unions and the need for the CFPB to recognize their difference from "very large" financial institutions.
2. The potential impact of the proposed rule on financial inclusion, highlighting the importance of maintaining credit unions' ability to serve as financial lifelines.
3. The operational challenges and broader ecosystem impact that could arise, threatening the sustainability of small credit unions and the diversity of the financial services landscape.
4. The effectiveness of an educational and empowerment approach over restrictive regulations, emphasizing credit unions' successful financial literacy initiatives.
5. Proposed solutions include exemptions for credit unions, enhanced education efforts, and collaborative engagement between the CFPB, credit unions, and other stakeholders.

In light of these considerations, DakCU respectfully urges the CFPB to:

- Reconsider the proposed rule in its current form, taking into account the distinct nature and contributions of credit unions to financial inclusion and community well-being.
- Implement specific exemptions for credit unions from the overdraft fee rule to ensure that they can continue to fulfill their mission without undue regulatory burdens.
- Collaborate with DakCU and its member credit unions in developing and promoting financial literacy initiatives, recognizing the value of education in fostering financial wellness.
- Establish a framework for ongoing dialogue and engagement to ensure that future regulations reflect the realities of the financial ecosystem and support the needs of all consumers, particularly those served by credit unions.



DakCU stands ready to partner with the CFPB and other stakeholders in pursuing these goals, committed to a vision of a financial ecosystem that is fair, inclusive, and empowering for all. Together, we can build regulatory frameworks that protect consumers while enabling credit unions to continue their critical work in communities across the Dakotas and beyond.

We appreciate the opportunity to provide input on this vital issue and look forward to constructive dialogue and collaboration with the CFPB and other interested parties.

Respectfully,

A handwritten signature in black ink, appearing to read "Jeffrey Olson". The signature is fluid and cursive.

Jeffrey Olson
CEO/President

A handwritten signature in black ink, appearing to read "John Alexander III". The signature is fluid and cursive.

John Alexander
Director of Legislative & Regulatory Affairs