**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF MISSISSIPPI**
**NORTHERN DIVISION**

MISSISSIPPI BANKERS ASSOCIATION,
409 W. Parkway Pl.,
Ridgeland, MS 39157

CONSUMER BANKERS ASSOCIATION,
1225 New York Ave., NW, Suite 1100
Washington, D.C. 20005

AMERICAN BANKERS ASSOCIATION
1333 New Hampshire Ave. NW,
Washington, DC 20036

AMERICA'S CREDIT UNIONS
4703 Madison Yards Way, Suite 300
Madison, WI 53705

ARVEST BANK
75 North East Street
Fayetteville, AR 72701

BANK OF FRANKLIN
9 Main Street
Meadville, MS 39653

THE COMMERCIAL BANK
P.O. Box 217
175 Hopper Avenue
DeKalb, MS 39328

*Plaintiffs*,

v.

CONSUMER FINANCIAL PROTECTION BUREAU and ROHIT CHOPRA in his official capacity as Director of the CFPB,
1700 G. St. NW, Washington, DC 20552

*Defendants.*

Civil Action No. 3:24cv792-CWR-LGI

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65 and the Administrative Procedure Act, 5 U.S.C. § 705, Plaintiffs in the above-captioned action move the Court to issue a preliminary injunction enjoining the Consumer Financial Protection Bureau's Final Rule titled Overdraft Lending: Very Large Financial Institutions ("Final Rule") in its entirety, and extending the compliance deadline day-for-day with the injunction. Plaintiffs would show:

1. Plaintiffs hereby incorporate by reference their accompanying Memorandum of Law, including all arguments, authority, and evidence cited therein.

2. Plaintiffs also submit and rely upon the following exhibits:

a. Exhibit 1, 28 U.S.C. § 1746 Declaration of the Consumer Bankers Association

b. Exhibit 2, 28 U.S.C. § 1746 Declaration of Anonymous Bank A

c. Exhibit 3, 28 U.S.C. § 1746 Declaration of the Mississippi Bankers Association

d. Exhibit 4, 28 U.S.C. § 1746 Declaration of Arvest Bank

e. Exhibit 5, 28 U.S.C. § 1746 Declaration of the American Bankers Association

f. Exhibit 6, 28 U.S.C. § 1746 Declaration of Anonymous Credit Union B

g. Exhibit 7, 28 U.S.C. § 1746 Declaration of America's Credit Unions

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully submit that the Court should grant their Motion for Preliminary Injunction, enjoin the Final Rule in its entirety, and extend the compliance deadline day-for-day with the injunction. Plaintiffs also pray for such additional, alternative, or supplemental relief as may be appropriate in the premises.

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Respectfully submitted, this the 18th day of December 2024.

PLAINTIFFS MISSISSIPPI BANKERS ASSOCIATION, CONSUMER BANKERS ASSOCIATION, AMERICAN BANKERS ASSOCIATION, AMERICA'S CREDIT UNIONS, ARVEST BANK, BANK OF FRANKLIN, AND THE COMMERCIAL BANK

By: s/ *E. Barney Robinson III* (MSB #09432)
E. Barney Robinson III (MSB #09432)
Benjamin M. Watson (MSB #100078)
Samuel D. Gregory (MSB #104563)

PLAINTIFFS' COUNSEL

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**CERTIFICATE OF SERVICE**

I, E. Barney Robinson III (MSB #09432), an attorney for Plaintiffs, do hereby certify that on December 18, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification to all counsel of record.

s/ *E. Barney Robinson III* (MB # 09432)
E. Barney Robinson III (MB # 09432)

# EXHIBIT 1

# DECLARATION OF THE CONSUMER BANKERS ASSOCIATION

I, Lindsey Johnson, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I submit this Declaration in support of the Complaint and Motion for Preliminary Injunction filed on December 18, 2024 by the Mississippi Bankers Association, the Consumer Bankers Association, the American Bankers Association, America's Credit Unions, Arvest Bank, Bank of Franklin, and The Commercial Bank. I am of the age of majority, and I am competent to make this declaration, which is based on my personal knowledge.

2. I am the President and CEO of the Consumer Bankers Association ("CBA").

3. The CBA is a member-driven trade association, and the only national financial trade group focused exclusively on retail banking—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members operate in all 50 states, including Mississippi. They include the nation's largest bank holding companies as well as regional and super-community banks. Eighty-three percent of CBA's members are financial institutions holding more than $10 billion in assets.

4. I have been personally involved in CBA's advocacy regarding efforts by the Consumer Financial Protection Bureau ("CFPB"), pursuant to the Truth in Lending Act ("TILA") and Regulation Z, to deem discretionary overdraft services as "credit" and substantively regulate how they are offered by financial institutions with assets over $10 billion, including the proposed regulations published in the Federal Register on February 23, 2024 (Proposed Rule), and the final regulations approved by the CFPB on December 12, 2024 (Final Rule). I have spoken directly with many of our member banks about the Proposed Rule and the Final Rule, and I have participated regularly in meetings of the CBA's Board of Directors and

am familiar with the work of various CBA committees that have discussed the Proposed Rule, including CBA's Deposits and Payments Committee. In these discussions, I have learned about the impacts of the Final Rule on our members, including compliance costs, and the time needed to implement regulatory changes, as well as the impacts on customers.

5. On April 1, 2024, CBA submitted a detailed comment letter to the CFPB advocating against the Proposed Rule. As the CBA explained in its comment letter, the Proposed Rule ignored the plain language of TILA—a disclosure statute—to create a new and elaborate set of substantive rules and restrictions affecting the terms under which discretionary overdraft services may be offered. For example, the Proposed Rule would have imposed a cap on overdraft fees as a requirement for banks to continue offering discretionary overdraft services on the same terms as they do today. For banks that charge fees above the newly-created fee cap, the Proposed Rule would have imposed substantive restrictions on the terms under which those services could be offered. Thus, CBA explained, the Proposed Rule is at odds with both the statutory language of TILA and the statute's narrow purpose, which is disclosure of credit terms.

6. Over the last several years, many CBA members have offered innovative features associated with discretionary overdraft services, such as reduced overdraft fees, real-time low-balance alerts, minimum thresholds to trigger an overdraft fee, grace periods for customers to add funds to their accounts after an overdraft, and limits on the number of overdraft fees that can be charged each day, on top of free-checking products that have been available for longer. These changes have allowed banks to provide a critical form of liquidity with greater protections for consumers, many of whom lack access to traditional forms of credit and use overdraft services to pay critical expenses such as rent, food, gas, and medical care. CBA explained how the CFPB's

Proposed Rule would actually hurt consumers, as it would restrict access to overdraft liquidity for many consumers, particularly those who lack access to credit.

7. To assess the impact of the Proposed Rule on overdraft liquidity, CBA conducted a survey of major retail banks who sit on CBA's Board of Directors or CBA's Deposits and Payments Committee. The survey was conducted from October 25, 2024 to November 13, 2024. CBA received responses from 21 banks, serving an average of 1.7 million overdraft consumers in 2023 (though not all respondents provided responses to all questions). In the survey, the CBA asked banks whether the overdraft fee cap would reduce the amount of discretionary overdraft-related liquidity they are able to offer consumers. Twelve (12) of the thirteen (13) banks (i.e. over 90%) that responded to that question and that qualify as a "very large financial institution" under the Final Rule responded that it would. CBA also asked in its survey as to the amount of expected reduction in liquidity if the fee cap were set at $7 or $3. Of the 12 large banks that responded to those requests, 4 responded that a $7 fee cap would result in reduction of liquidity between 76% – 100%, 6 responded that a $3 fee cap would result in reduction of liquidity between 76% – 100%, and 2 responded "Not Sure." This reduction in liquidity could result either from banks scaling back the discretionary overdraft services they offer or from customers no longer qualifying for the discretionary overdraft services that banks offer above the fee cap (due to the new underwriting requirements imposed by the Final Rule).

8. CBA provided the survey results to the CFPB on November 14, 2024, and the CFPB acknowledged receipt on November 18, 2024 and confirmed that the results would be included on the docket. In its cover letter, attached as Exhibit 1, CBA encouraged the CFPB to conduct a rigorous, empirically sound analysis of how reduced discretionary overdraft liquidity would affect consumers, especially those who lack access to credit. CBA noted that, according

to survey data, approximately two-thirds of consumers who reported having overdrafted four or more times in the past twelve months said that they previously had a credit card application rejected—nearly twice the rate of consumers who reported having not overdrafted in the past twelve months.

9. The CFPB has recognized the possibility that the Final Rule would cause banks to restrict the provision of discretionary overdraft services. Final Rule at 221. It has acknowledged that such actions would hurt consumers and that frequent overdrafters "tend to have lower incomes and lower end-of-day balances"; are "less likely to have access to alternative credit options"; "have lower credit scores, are less likely to have a general purpose credit card, and, if they do have such a card, they have less credit available on it"; and that "Black households and Latino households are more likely to incur overdraft fees than white households." *Id.* at 21–22. The CBA's own survey results bear this out. Eliminating or substantially limiting overdraft services for a significant segment of retail banks' customer bases will have the harmful effect of pushing consumers without access to credit into the arms of predatory lenders instead of regulated banking alternatives like discretionary overdraft services.

10. CBA member banks, regardless of size, typically utilize standard templates for their deposit account agreements. I am generally familiar with these templates. The templates I have seen do not give consumers the right to overdraw their accounts or to defer payment of any overdrafts, and expressly provide that banks may immediately debit consumers' accounts to recoup any overdraft and overdraft fee when funds become available. Consumers do not have the right to overdraw their account under these template account agreements, nor do they have the right to defer repayment of the overdraft amount or associated fee.

11. Nonetheless, it is my understanding that under the CFPB's Final Rule, financial institutions over $10 billion must treat discretionary overdraft services as credit if they charge a fee that exceeds the CFPB's $5 price cap or a "breakeven" amount reflecting the pro rata share of a banks' "total direct costs and charge-off losses for providing [discretionary overdraft services] in the previous year." Final Rule at 124. According to member banks I have spoken with, their "breakeven" cost under the Final Rule would not include general overhead costs (including time spent by branch personnel interacting with customers about discretionary overdraft services), technology change costs, and underwriting costs not directly traceable to a specific offering of non-covered overdraft "credit," or charge-off losses due to unauthorized use, electronic funds transfer errors, billing errors, returned deposit items, or rescinded provisional credit.

12. Based on my discussion with our members, under the CFPB's Final Rule, financial institutions with assets over $10 billion are faced with a choice: they can offer discretionary overdraft services at a loss (by charging either the CFPB's $5 fee cap or their own breakeven amount which is not a true breakeven amount), or they can charge a higher fee and comply with additional substantive terms that require them to modify their product offerings, limit their non-overdraft fees, and assess the creditworthiness of consumers. That is a choice that fundamentally changes the overdraft services currently offered by banks to consumers and will ultimately harm consumers by restricting overdraft liquidity.

13. It is my understanding that if a CBA member over $10 billion decides to offer a separate overdraft "credit" account governed by Regulation Z, the bank would need to reprogram its deposit systems to route overdraft "credit" into a separate account. I also understand from my discussions with members that banks that offer accounts governed by Regulation Z must create a

variety of disclosures, and establish procedures designed to ensure that those disclosures are accurate and provided to consumers in a timely fashion. I have been informed that the process of creating and disseminating the disclosures required by Regulation Z would necessitate extensive legal and compliance review, as well as preparation of mailouts to customers and updates to the banks' website, marketing materials, and policies and procedures. Banks that permit consumers to link their deposit account to a debit card or account number must conduct ability-to-pay determinations, which involves collecting and analyzing their customers' financial information as part of a new underwriting process. This process would require the creation of databases to upload and collect the necessary documentation and hiring of personnel to perform underwriting. It also requires extensive employee training and new compliance management procedures.

14. CBA members have informed me that, under the Final Rule, if they choose to offer discretionary overdraft services at their "breakeven" cost, they must expend resources determining what that cost is under the CFPB's criteria (which, as discussed, significantly understates the cost of providing discretionary overdraft services). To perform this calculation, they have told me they will need to aggregate and document their "total direct costs and charge-off losses for providing [discretionary overdraft services] to all accounts open at any point in the previous year." Final Rule at 106.

15. In addition, CBA member banks have informed me that if they charge their "breakeven" cost or the CFPB's $5 fee cap, they must significantly change their account offerings and business strategy in order to avoid providing discretionary overdraft services at a loss. Some banks will have to change the types of accounts they offer and restrict the availability of discretionary overdraft services to certain qualified customers. This includes, for example, eliminating free-checking for some or all customers, and instituting or increasing minimum

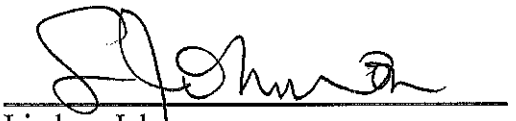
balance requirements and/or monthly account servicing fees for low- or negative-balance accounts. Likewise, banks that have adopted consumer-friendly overdraft policies such as *de minimis* negative balance or transaction amounts or daily overdraft fee limits will be forced to eliminate or scale back those policies. Each of these changes, in turn, require upfront analyses by business and legal personnel, and then considerable implementation work on the back-end, such as making system changes and testing operating systems, revising policies and procedures, updating account agreements, issuing new overdraft fee disclosures to existing customers (including the CFPB's model A-9), revising marketing materials, training retail employees in the branch and call centers, and conducting additional compliance management and audit reviews.

16. The Final Rule is effective on October 1, 2025. Given the imminence of that compliance date and the complicated nature of the changes it requires, CBA members over $10 billion must start to prepare now if they are to be ready to comply with the Final Rule by its effective date.

17. Of the banks that responded to CBA's survey, discussed above, eight (8) out of twelve (12) that responded to a question on estimated costs indicated that they would incur implementation costs in excess of $100,000 over the next six months in order to prepare for the Final Rule. Three (3) of those eight (8) banks estimated implementation costs in excess of $500,000 in the first six months, with four (4) banks estimating total implementation costs in excess of $1 million.

18. Plaintiff Arvest Bank is a member of the CBA.

19. I declare under penalty of perjury, this 18th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.



Lindsey Johnson
Consumer Bankers Association

# EXHIBIT 1


November 14, 2024

Via Certified Mail and Email to 2024-NPRM-OVERDRAFT@cfpb.gov

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

Re: Overdraft Lending: Very Large Financial Institutions – Notice of Proposed Rulemaking – Docket No. CFPB-2024-0002 (RIN 3170-AA42)

Dear Director Chopra:

The Consumer Bankers Association (CBA)[1] writes to submit data gathered through a survey of CBA members[2] to better understand the potential impact of the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed overdraft fee rule (Proposal) on discretionary overdraft liquidity.[3] As member responses to this survey illustrate, if the Proposal is finalized as currently drafted at the $3, $7, or $14 level, the CFPB would be forcing many banks to reduce the amount of liquidity they offer consumers via discretionary overdraft services. Given the average number of consumers who rely on these respondents' overdraft services to make ends meet, the potential consumer harm appears to be substantial. The data demonstrate the flaws in the cursory and insufficient cost-benefit analysis contained in the Proposed Rule, as well. Given the findings of our survey, we strongly encourage the CFPB to conduct a rigorous, empirically-sound exploration of the impact to consumers of this reduced liquidity before finalizing its Proposal.

As CBA's previously submitted comment letter on the Proposal explains, consumers make strategic decisions about overdraft services and how they use them.[4] By incurring a fee in exchange for using overdraft services, consumers are able to access critical liquidity, often when

[1] The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.
[2] The survey was fielded to members of CBA's Deposits and Payments Committee as well as all CBA Board banks.
[3] CFPB, *Proposed Rule: Overdraft Lending: Very Large Financial Institutions*, 89 Fed. Reg. 13,852 (Jan. 17, 2024) at https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf.
[4] CBA Comment to Overdraft Lending: Very Large Financial Institutions – Notice of Proposed Rulemaking – Docket No. CFPB-2024-0002, at p. 3, *available at* https://consumerbankers.com/wp-content/uploads/2024/04/CBA-Comment-on-CFPB-Docket-2024%E2%80%930002.pdf.

no other depository-offered alternative is available.[5] Banks meet these needs and provide access to safe, well-regulated, high-quality consumer products and services.[6] Further, as the CFPB has recognized, banks in recent years have invested significant resources toward innovating overdraft services for consumers' long-term benefit.[7]

Through this innovation and competition, banks have been able to preserve a critical form of liquidity for consumers, many of whom lack access to traditional forms of credit. In a separate recent nationwide survey, CBA found that approximately two-thirds of consumers who report having overdrafted four or more times in the past twelve months report that they previously had a credit card application rejected.[8] This is nearly twice the rate of consumers who report having not overdrafted over the last twelve months. Indeed, consumers who self-identified as having overdrafted four or more times in the last twelve months reported that, absent overdraft services, they would have been as likely to use a credit card to complete the transaction as having to pawn or sell their household goods.

***The CFPB's Proposal fails to appropriately address the likelihood of a widespread reduction of overdraft services and the negative impact the Proposal would have on U.S. consumers who need them most.***

When writing rules, the CFPB is required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to consider "the purpose of ensuring that all consumers have access to markets for consumer financial products and services."[9] The Dodd-Frank Act similarly requires that the Bureau's rulemaking proposals appropriately consider "the potential benefits and costs to consumers . . . including the potential reduction of access by consumers to consumer financial products or services."[10]

As we have previously noted, the Proposal's Dodd-Frank Act Section 1022(b) cost-benefit analysis fails to properly consider or estimate the impact of the rule on consumers.[11] In the Proposal, the CFPB acknowledged the possibility that some consumers may be harmed by a reduction in access to discretionary overdraft products, but nevertheless took the position that the CFPB was unable to quantify the impact.[12] We disagree with the premise that the CFPB lacks access to evidence to support the fact that the reduction in access to overdraft services could be significant.[13] Nonetheless, in an effort to help the Bureau further consider this issue, CBA has conducted a survey of its members to assess the likelihood and scope of a loss of liquidity that would result from the implementation of its Proposal. As explained more thoroughly below, the survey confirms that, if implemented, the Proposal would lead to a significant reduction in the amount of discretionary liquidity available to customers. That, in turn, would invariably result in a reduction of access to overdraft products by many consumers who, as noted above, rely on

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[5] *Id.* at 10-11, 13.
[6] *Id.* at 13-14.
[7] See, e.g., CONSUMER FIN. PROT. BUREAU, OVERDRAFT/NSF REVENUE DOWN NEARLY 50% VERSUS PRE-PANDEMIC LEVELS (2023), https://www.consumerfinance.gov/data-research/research-reports/dataspotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/.
[8] CBA Releases National Empirical Survey Results Showing Consumer Value and Need for Bank Overdraft Products, CONSUMER BANKERS ASS'N (Mar. 21, 2024), https://www.consumerbankers.com/cba-media-center/media-releases/cba-releases-national-empiricalsurvey-results-showing-consumer.
[9] 12 U.S.C. § 5511(a).
[10] 12 U.S.C. § 5512(b)(2)(A)(i).
[11] Proposal, 89 Fed. Reg. at 13,886-87; *see* CBA Comment Ltr. at 5-7.
[12] *Id.* at 13,886-93.
[13] *See* CBA Comment Ltr. at 2-3, 5-7.

these products as their only consistent source of liquidity. We view these findings as important and demonstrable of evidence already in the record regarding the significant harm that could result from the CFPB's implementation of the Proposal. We request the Bureau take this data into consideration in finalizing its Proposal, including as part of the required cost-benefit analysis.

As CBA and other commentators have previously explained, financial institutions are disincentivized to implement the CFPB-mandated price caps due to manage the risk associated with providing overdraft services and the inability to earn revenue (and, in fact, the likelihood that they would lose money based on all the costs not considered in setting the price cap).[14] The CBA and others have explained that the same negative impacts on liquidity would result from banks continuing to charge overdraft fees above the so-called "breakeven" rate because the new regulatory regime the Proposal puts in place would require underwriting that would disqualify many consumers who otherwise lack access to credit.[15] In addition, banks that continue to charge above "breakeven" would lack clarity about important compliance issues, including with respect to rules under the Military Lending Act.[16]

While we have attempted to discuss these and other issues relating to the Proposal directly with the Bureau, CFPB leadership repeatedly refused to meet with CBA and its members after the Proposal was issued.[17] Accordingly, despite multiple attempts, CBA must now present this information in survey form, rather than in presentation to the Director: aggregated, anonymized information setting out the consumer impact of the Proposal and how the CFPB's price caps would force a reduction in the amount of liquidity available to consumers – many of whom lack access to credit.

Our survey of top consumer banks shows that:

- If the Proposal is finalized as currently drafted at the $3, $7, or $14 level, **92 percent (twelve out of thirteen)** banks that responded)[18] reported that some percentage of their bank's current retail customers that previously had access to discretionary overdraft services would experience a reduction in the amount of discretionary liquidity available to them.

- If the Proposal is finalized as currently drafted at the $14 level,
    - Two (2) respondents reported that discretionary overdraft liquidity would be reduced by 76%-100%;

[14] CBA Comment Ltr. at 6-9.
[15] *Id.* at 5-6.
[16] *Id.* at 6-7.
[17] The CFPB directly declined to meet with CBA or failed to respond to meeting requests on several occasions both during and after the end of the comment period of the Overdraft Proposed rulemaking. This includes, but is not limited to, invitations to meet with our Board of Directors during its March, June, and October 2024 meetings. From the most recent correspondence with the CFPB, it is our understanding that the CFPB would be willing to meet with our Board Members, but that any such meeting would be "exclusively between your [CBA] Board members and the [CFPB] Director," such that "[n]o CBA representatives at any level would be invited to participate." But even accepting those conditions, we have been unable to schedule a meeting with CFPB to discuss the impact of the Proposal on the consumers our members serve.
[18] There were a total of 21 responses to the survey. Some respondents, however, either did not offer overdraft or did not meet the definition of a "Very Large Financial Institution," defined as an insured depository institution or credit union with more than $10 billion in assets.

  - One (1) respondent reported it would be reduced by 51%-75%;
  - One (1) respondent reported it would be reduced by 26%-50%;
  - Five (5) respondents reported it would be reduced by 1%-25%;
  - One (1) respondent reported it would be reduced by less than 1%; and
  - Two (2) respondents reported they were not sure what discretionary overdraft liquidity would be reduced by.

- If the Proposal is finalized as currently drafted at the $7 level,
  - Four (4) respondents reported discretionary overdraft liquidity would be reduced by 76%-100%;
  - One (1) respondents reported it would be reduced by 51%-75%;
  - Three (3) respondents reported it would be reduced by 26%-50%;
  - Two (2) respondents reported it would be reduced by 1%-25%; and
  - Two (2) respondents reported they were not sure what discretionary overdraft liquidity would be reduced by.

- If the Proposal is finalized as currently drafted at the $3 level,
  - Six (6) respondents reported discretionary overdraft liquidity would be reduced by 76%-100%;
  - Two (2) respondents reported it would be reduced by 51%-75%;
  - Two (2) respondents reported it would be reduced by 26%-50%; and
  - Two (2) respondents reported they were not sure what discretionary overdraft liquidity would be reduced by.

CBA urges the CFPB to appropriately estimate the potential reduced liquidity available to consumers, across the range of banks that would be impacted by the Proposal, so that the CFPB and general public can appropriately understand how the Proposal may potentially harm consumers. If you have any questions about the methodology or survey findings, we would welcome an opportunity to discuss the above with you in person.

Sincerely,

David Pommerehn
SVP, General Counsel
Head of Regulatory Affairs
Consumer Bankers Association
dpommerehn@consumerbankers.com

# EXHIBIT 2

# DECLARATION OF ANONYMOUS BANK A

I, Chief Risk Officer of Anonymous Bank A, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently the Chief Risk Officer of Anonymous Bank A. I have been personally involved in efforts to evaluate the new Rulemaking by the Consumer Financial Protection Bureau ("CFPB") titled Overdraft Lending: Very Large Financial Institutions, posted on the CFPB's website on December 12, 2024 (hereinafter "Final Rule"), and its impact on Anonymous Bank A. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Mississippi Bankers Association, the American Bankers Association, the Consumer Bankers Association, America's Credit Unions, Arvest Bank, Bank of Franklin, and The Commercial Bank. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge and investigation.

## I. Anonymous Bank A's Services and Discretionary Overdraft Service

2. Anonymous Bank A is a member of the Mississippi Bankers Association and the American Bankers Association. Anonymous Bank A is headquartered in Mississippi and operates full service branches in Mississippi. Anonymous Bank A strives to provide a wide range of products and services to its customers, including discretionary overdraft services. As detailed below, the Final Rule will have a dramatic negative effect on Anonymous Bank A's ability to continue offering discretionary overdraft services to its checking account customers and will cause Anonymous Bank A to incur significant non-recoverable compliance costs.

3. Anonymous Bank A currently has assets in excess of $10 billion and is classified as a Very Large Financial Institution under the Final Rule.

4. Anonymous Bank A offers a wide variety of products and services to its customers at affordable prices, including discretionary overdraft services to customers with checking accounts. Anonymous Bank A allows customers to use a debit card in order to more easily make purchases.

5. Anonymous Bank A's discretionary overdraft service is provided as a standard deposit account feature, and while an opt-in election provides the customer with access to the discretionary overdraft service, the service does not require a separate application by the consumer. Anonymous Bank A's deposit account agreement sets forth the terms governing Anonymous Bank A's discretionary overdraft service. As is standard in the industry, the account agreement grants Anonymous Bank A discretion to cover a customer's overdraft and does not confer a right upon the customer to incur a debt. In addition, under the account agreement, Anonymous Bank A retains the right to recover any unpaid overdraft (and overdraft fee) upon demand, and it is Anonymous Bank A's practice to recover unpaid amounts by debiting the customer's account when new funds are deposited into the account.

6. Anonymous Bank A's discretionary overdraft service has a number of pro-consumer features that reduces both the incidence and amount of overdraft fees. For example, Anonymous Bank A's policy is that a customer must exceed a *de minimis* negative balance before an overdraft fee is charged. Anonymous Bank A also limits the number of overdraft fees that a customer may be charged daily.

## II. Anonymous Bank A's Non-Recoverable Compliance Costs

7. To date, Anonymous Bank A's employees have already spent significant time reviewing and assessing the proposed rule and Final Rule and their potential impact on

Anonymous Bank A, including their impact on current and future business plans of Anonymous Bank A.

8. As explained more fully below, the Final Rule will require Anonymous Bank A to incur numerous additional costs in order to meet the Final Rule's October 1, 2025 implementation date. These include the costs of assembling a project management team (consisting of compliance, deposit operations, information technology, training, and legal personnel) to review the Final Rule, analyze Anonymous Bank A's options for compliance with it, and oversee the necessary changes. It will also require hiring multiple third-party consultants to assist Anonymous Bank A in collecting and analyzing the data needed to evaluate Anonymous Bank A's options for compliance with the Final Rule.

9. As also explained more fully below, in addition to the costs outlined in paragraphs 7 and 8 above, Anonymous Bank A will incur non-compensable costs no matter whether it offers discretionary overdraft services with fees priced above or below the Final Rule's $5 fee cap or its "breakeven" cost. Alternatively, if it elects to stop offering certain overdraft services, then Anonymous Bank A will likely experience account attrition and revenue reduction if customers who previously availed themselves of discretionary overdraft coverage are no longer able to do so.

10. In addition, regardless of which path Anonymous Bank A takes in response to the Final Rule, the changes resulting from the Final Rule are likely to harm Anonymous Bank A's customers who rely on discretionary overdraft services the most. Should Anonymous Bank A decide to reduce its overdraft fee to its "breakeven" cost or the CFPB's $5 fee cap, it would be compelled to scale back the discretionary overdraft services it offers in line with its safety and soundness obligations. This reduction in availability of discretionary overdraft services would

likely harm Anonymous Bank A's customers who lack consistent access to credit. Should Anonymous Bank A go a different direction and decide to charge above the Final Rule's $5 fee cap or its "breakeven" cost (which, as discussed below, is not truly breakeven), many of its customers would likely no longer qualify for Anonymous Bank A's discretionary overdraft service due to the new underwriting requirements imposed by the Final Rule. Accordingly, as a result of the Final Rule, many of Anonymous Bank A's customers who currently rely upon discretionary overdraft services as a source of short-term liquidity will be forced to resort to riskier and more expensive alternatives, such as payday loans and pawn shops.

**A. Discretionary Overdraft Fees at the Price Cap or "Breakeven" Cost**

11. In preparing for the Final Rule, Anonymous Bank A must determine at which price it will offer discretionary overdraft services—(1) its "breakeven" cost as defined by the CFPB, (2) the $5 fee cap set by the Final Rule, or (3) a fee amount in excess of the price cap and its "breakeven" cost. Such a determination requires first having to calculate Anonymous Bank A's "breakeven" cost under the CFPB's criteria, which involves identifying, quantifying, and calculating the bank's "total direct costs and charge-off losses for providing [discretionary overdraft services] in the previous year." 12 C.F.R. § 1026.62(d)(5).[1]

12. Upon determining its "breakeven" cost under the CFPB's criteria, Anonymous Bank A must compare both that amount and the $5 fee cap to its actual cost of providing the service. That is because the CFPB's criteria for calculating the "breakeven" and $5 fee cap do not include general overhead costs (including costs for branch servicing, mailing overdraft notices, collections, core provider and other technology, and compliance review) not directly

[1] Citations of the Code of Federal Regulations include those that the CFPB has updated in the Final Rule.

traceable to a specific offering of non-covered overdraft "credit," or charge-off losses due to unauthorized use, electronic funds transfer errors, returned deposit items, or rescinded provisional credit. 12 C.F.R. § 1026.62(d)(4). As detailed below in paragraph 13, each of these costs must be identified, quantified, and calculated in order to determine the true cost of administering Anonymous Bank A's discretionary overdraft service. Furthermore, as explained more thoroughly below in paragraph 14, because the "breakeven" cost and $5 fee cap are almost certainly lower than Anonymous Bank A's current overdraft fee, the bank must also determine the changes it would have to make to its service offerings in order to continue offering discretionary overdraft services at these reduced fee amounts. Finally, in the event Anonymous Bank A decided to offer its discretionary overdraft service at the "breakeven" amount or $5 fee cap, it would incur further costs in implementing any required changes to its service offerings, as discussed below in paragraphs 14–21.

13. The process of calculating its "breakeven" cost would be both costly and time-consuming for Anonymous Bank A. As a first step, Anonymous Bank A would need to engage its third-party core service provider ("Core Provider") to assist with extracting data from its core banking system, a process that for other data requests of comparable scope in the recent past has taken between two and three months. The data-extraction process here would likely take even longer. The Core Provider is one of only several major providers of core processing platforms for large financial institutions and, consequently, would likely be inundated with similar requests from other large financial institutions subject to the Final Rule. In my experience, the Core Provider does not have the fulfillment capacity to handle many competing demands from other banks all at once. Once the data is obtained from the Core Provider, Anonymous Bank A may

need to engage a third-party consultant to analyze the data, a process that, in turn, would likely last several months and cost approximately $600,000.

14. In the likely event that Anonymous Bank A's "breakeven" fee is lower than its current fee, it would also need to analyze the impact of this lower "breakeven" fee on its discretionary overdraft service and deposit account services, i.e., determine whether changes must be made to overdraft access, overdraft limits, and other aspects of the discretionary overdraft service offered, such as daily limits and *de minimis* thresholds. In addition, Anonymous Bank A will have to assess and model the impact of the breakeven fee on deposit account pricing. It may be necessary for Anonymous Bank A to increase pre-existing fees for non-overdraft services, charge new fees to customers, and/or impose higher minimum balance requirements to avoid certain fees.

15. The changes described in paragraph 14 would, in turn, trigger additional changes to Anonymous Bank A's systems, processes, policies, and disclosures, each of which imposes significant costs as well as operational and compliance risks on Anonymous Bank A. For example:

16. Anonymous Bank A would need to conduct an overall pricing and operational review of its deposit services, including the non-overdraft fees it charges as well as minimum account requirements for those accounts.

17. Anonymous Bank A would have to reflect changes to its discretionary overdraft services in its core operating system, which will require system changes and testing.

18. Anonymous Bank A would have to amend its policies and procedures to reflect the changes required by the Final Rule.

19. Anonymous Bank A would need to update its deposit account and overdraft fee disclosures, including the CFPB's model A-9 disclosure, and send them to all existing customers prior to the effective date of the change. To disseminate the updated disclosures to its customers on the schedule imposed by the Final Rule, Anonymous Bank A would need to update its website and send mailouts to any customer who has not consented to receipt of electronic disclosures, at a cost of approximately $1.50 per customer. Anonymous Bank A does not routinely send out universal disclosures or updates to its policies and procedures, and would therefore need to prepare a special mailout of the updated disclosures required by the Final Rule. Based upon the number of checking account customers with Anonymous Bank A, the cost of customer mailings alone could be as high as $1.5 million.

20. Anonymous Bank A would need to revise or update its marketing materials, including its new customer materials.

21. Anonymous Bank A would need to train its staff with respect to the changes required by the Final Rule.

22. In the likely event that Anonymous Bank A elects to make significant changes to its overdraft program or deposit account offerings in response to the Final Rule's fee cap or "breakeven" cost, such changes would require hiring of third-party consultants to conduct the necessary data analysis and planning. Specifically, Anonymous Bank A currently maintains a dynamic system of overdraft limits based on recent account activity. To adjust for changes in the price of discretionary overdraft fees mandated by the Final Rule, Anonymous Bank A would need to examine utilization of overdraft limits across its customer base, and conduct an analysis of charge-off amounts for customers with different risk profiles. Projects of comparable scope completed by third-party consultants have historically cost approximately $600,000.

23. Based on Anonymous Bank A's prior experiences with implementing changes to its service offerings, Anonymous Bank A estimates that the total costs of making the above-described changes would be approximately $2 million.

**B. Discretionary Overdraft Fees Above Breakeven Cost**

24. Under the terms of the Final Rule, if Anonymous Bank A decides to offer its discretionary overdraft service with fees above the fee cap and its breakeven cost, it must incur costs now to assess how Regulation Z's requirements will apply to overdraft "credit." These compliance costs are associated with the following changes:

25. Anonymous Bank A would need to design two different deposit account services: one service which would not allow customers to overdraw their deposit account (which would be governed by Regulations E and DD because it did not provide access to overdraft "credit"), and another service that would allow customers to overdraw their deposit account (governed by Regulation Z because it did provide access to overdraft "credit").

26. Anonymous Bank A would have to establish a framework, supported by the necessary infrastructure, to conduct ability-to-pay determinations. This would include, among other things, a process for the bank to collect information from customers that permits the bank to calculate the customer's debt-to-income ratio, debt-to-asset ratio, and the customer's income after paying their debt obligations.[2] The infrastructure would include databases to upload and collect the necessary documentation, as well as the personnel to perform the ability-to-pay analysis.

[2] 12 C.F.R. § 1026.51(a)(1).

27. Anonymous Bank A would have to create a variety of disclosures required under Regulation Z,[3] as well as procedures designed to ensure those disclosures are provided to customers in compliance with the timing requirements of Regulation Z. The process of disseminating the updated disclosures to customers would likely result in costs similar to those outlined in paragraph 19.

28. Anonymous Bank A would have to modify its deposit systems so that, when the customer overdraws the account, the overdraft "credit" is placed in a separate credit account. This will require reprogramming Anonymous Bank A's deposit account operating systems and testing.

29. Anonymous Bank A would have to comply with Regulation Z's fee requirements, including limitations on first-year fees,[4] finance charges imposed as a result of the loss of a grace period,[5] fees on over-the-limit transactions,[6] and penalty fees.[7] This also will require reprogramming of Anonymous Bank A's deposit account operating systems and testing.

30. Anonymous Bank A would have to modify its account operating systems to ensure compliance with Regulation Z's requirements of payment due dates and periodic statements.

[3] *Id.* §§ 1026.5; 1026.6(b)(2)(i)(F); 1026.7(b)(11)(i), (b)(12)(i), (b)(13); 1026.9(c)(2)(iv)(A)(8), (c)(2)(iv)(B)-(C), (g)(3)(i)(A)(6), (g)(3)(i)(B), (h).

[4] *Id.* § 1026.52(a).

[5] *Id.* § 1026.54.

[6] *Id.* § 1026.56.

[7] *Id.* § 1026.52(b).

31. Anonymous Bank A would have to determine whether its provision of discretionary overdraft services is subject to Regulation Z's requirements related to applications, solicitations, and the provision of dispute rights.[8]

32. Anonymous Bank A would need to extend its fair lending compliance efforts to cover overdraft "credit."

33. In addition to the costs outlined in paragraphs 25–32, Anonymous Bank A would have to incur costs related to the fact that services offered under Regulation Z are subject to the requirements of the Military Lending Act ("MLA"). Specifically, Anonymous Bank A would have to apply MLA provisions (such as the MLA's 36% Military Annual Percentage Rate ("MAPR") for covered credit) to deposit account holders who are covered servicemembers and their dependents in connection with deposit account overdrafts.[9] This could result in an additional loss of revenue for Anonymous Bank A. Furthermore, Anonymous Bank A would need to establish a process to determine servicemembers' status at the time of account opening and to comply with the MLA's MAPR cap as well as its other provisions. This might require Anonymous Bank A to rely on verification services provided by Credit Reporting Agencies, which would be an added expense.

34. Any and all changes mandated by Regulation Z and the MLA would require Anonymous Bank A to update its policies and procedures and marketing materials and to train its staff accordingly.

[8] *Id.* § 1026.13.
[9] 10 U.S.C. § 987(b).

35. Based on Anonymous Bank A's prior experiences with implementing changes to its service offerings, Anonymous Bank A estimates that the total costs of making the above-described changes would be equivalent to the amount listed above in Paragraph 23.

* * * * *

36. Anonymous Bank A anticipates that it will continue to incur non-compensable costs complying with the Final Rule unless the Final Rule is preliminarily enjoined. Preliminarily enjoining the Final Rule would prevent Anonymous Bank A from incurring more unrecoverable compliance costs. Vacating the Final Rule would address the economic injury on a more lasting basis and ensure that Anonymous Bank A can continue offering discretionary overdraft services to all deposit account customers.

37. I declare under penalty of perjury, this 18th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Authorized Signature
AUTHORIZED SIGNATURE FOR
ANONYMOUS BANK A

Signed copy maintained by Plaintiffs' counsel

# EXHIBIT 3

**DECLARATION OF THE MISSISSIPPI BANKERS ASSOCIATION**

I, Gordon Fellows, pursuant to 28 U.S.C. § 1746. hereby declare as follows:

1. I submit this Declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Mississippi Bankers Association, the Consumer Bankers Association, the American Bankers Association, America's Credit Unions, Arvest Bank, Bank of Franklin, and The Commercial Bank. I am of the age of majority, and I am competent to make this declaration, which is based on my personal knowledge.

2. I am the President and CEO of the Mississippi Bankers Association ("MBA").

3. The MBA is a private membership organization representing banks and savings institutions in the State of Mississippi.

4. The MBA provides education through seminars and conferences, information through various avenues such as The Mississippi Banker magazine, and representation in legislative and regulatory matters for the benefit of the banking industry and bank customers. The MBA also sponsors and endorses products and services for banks. The MBA has a long tradition of educating and involving bankers to improve their professional lives and their relationships with customers. The MBA includes eight financial institutions holding more than $10 billion in assets and that would qualify as "Very Large Financial Institutions" under the Final Rule—four headquartered in Mississippi, and four more who have a substantial number of retail locations in Mississippi. Anonymous Member Bank A is one of those MBA members. The MBA also includes a significant number of financial institutions holding under $10 billion in assets—57 headquartered in Mississippi, including the Bank of Franklin and The Commercial Bank, and 14 more who have a substantial number of retail locations in Mississippi: as explained below, these financial institutions also will be impacted by the Final Rule.

5. I have been personally involved in the MBA's advocacy regarding efforts by the Consumer Financial Protection Bureau ("CFPB"), pursuant to the Truth in Lending Act ("TILA") and Regulation Z, to deem discretionary overdraft services as "credit" and substantively regulate how they are offered by financial institutions with assets over $10 billion, including the proposed regulations published in the Federal Register on February 23, 2024 (Proposed Rule), and the final regulations approved by the CFPB on December 12, 2024 (Final Rule). Among other things, my personal involvement included reviewing and approving an April 1, 2024 comment letter to the CFPB on behalf of the American Bankers Association ("ABA"), MBA, and 51 other state bankers associations that called for the withdrawal of the Proposed Rule, as well as attending an in-person meeting in Washington, D.C. on September 9, 2024 between representatives of the CFPB and members and staff of the ABA and the MBA during which we explained how the Proposed Rule would diminish competition by leading banks of all sizes to reduce, if not eliminate, consumers' access to discretionary overdraft services.

6. I have spoken directly with many bankers in Mississippi about the Proposed Rule and the Final Rule, including the compliance and systems changes necessitated by the Final Rule. MBA members have expressed concern to me about how the CFPB has used its authority under TILA—a statute governing disclosure rules on "credit" products—to impose substantive restrictions on discretionary overdraft services, which do not resemble "credit" as defined in TILA. For example, the Final Rule sets a $5 cap or an arbitrary "breakeven" threshold on overdraft fees that undercounts actual costs as a requirement for banks to continue offering discretionary overdraft services on the same terms as they are today, and imposes additional substantive terms for banks that charge fees above the newly-created fee cap. The Final Rule is

at odds with both the statutory language of TILA and the statute's narrow purpose, which is disclosure of credit terms.

7. Over the last several years, many MBA members have offered innovative features associated with discretionary overdraft services, such as reduced overdraft fees, real-time low-balance alerts, minimum thresholds to trigger an overdraft, grace periods for customers to add funds to their accounts, and limits on the number of overdraft fees that can be charged each day, on top of free-checking products that have been available for longer. These changes have allowed banks to provide a critical form of liquidity with greater protections for consumers, many of whom lack access to traditional forms of credit and use discretionary overdraft services to pay critical expenses such as rent, food, gas, and medical care. The CFPB's Final Rule hurts consumers, both because it restricts access to discretionary overdraft liquidity for consumers who lack access to credit, and because it could lead to the imposition of other monthly account fees.

8. The CFPB has recognized the possibility that the Final Rule would cause banks to restrict the provision of discretionary overdraft services. *See* Final Rule at 221. It has acknowledged that such actions would hurt consumers and that frequent overdrafters "tend to have lower incomes and lower end-of-day balances"; are "less likely to have access to alternative credit options"; "have lower credit scores, are less likely to have a general purpose credit card, and, if they do have such a card, they have less credit available on it"; and that "Black households and Latino households are more likely to incur overdraft fees than white households." *Id.* at 21–22.

9. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") requires the CFPB, when drafting regulations, to take into account "the purpose of ensuring that all consumers have access to markets for consumer financial products and

services." 12 U.S.C. § 5511(a). Dodd-Frank additionally requires that the CFPB's rulemaking consider "the potential benefits and costs to consumers . . . including the potential reduction of access by consumers to consumer financial products or services." *Id.* § 5512(b)(2). The CFPB's Final Rule fails to meet these requirements as evidenced by the statements above. Eliminating or substantially limiting overdraft services for a significant segment of retail banks' customer bases will harm all bank customers by causing banks to charge other fees (such as monthly account fees), and pushing consumers without access to credit into the arms of predatory lenders instead of regulated banking alternatives like discretionary overdraft services.

10. The MBA's member banks, regardless of size, typically utilize standard templates for their deposit account agreements. I am generally familiar with these templates. They do not give consumers the right to overdraw their accounts or to defer payment of any overdrafts, and expressly provide that banks may immediately debit consumers' accounts to recoup any overdraft and overdraft fee when funds become available. Consumers do not have the right to overdraw their account, nor do they have the right to defer repayment of the overdraft amount and associated fee.

11. Nonetheless, the CFPB's Final Rule now requires financial institutions over $10 billion to treat discretionary overdraft services as credit if they charge a fee that exceeds the CFPB's $5 fee cap or a "breakeven" amount reflecting the pro rata share of its "total direct costs and charge-off losses for providing [discretionary overdraft services] in the previous year." Final Rule at 124. Thus, a large bank can only account for its cost of funds and operational costs that are directly attributable to its discretionary overdraft program. It cannot count general overhead costs (including time spent by branch personnel interacting with customers about discretionary overdraft services) not directly traceable to a specific offering of non-covered overdraft "credit,"

or charge-off losses due to unauthorized use, electronic funds transfer errors, billing errors, returned deposit items, or rescinded provisional credit. 12 C.F.R. § 1026.62(d)(4).[1] The CFPB's calculation of a bank's "breakeven" overdraft fee, therefore, fails to account for the actual costs banks will incur.

12. Financial institutions with assets over $10 billion are faced with a choice: they can offer discretionary overdraft services at a loss (by charging either the CFPB's $5 fee cap or their own breakeven amount which is not a true breakeven amount), or they can charge a higher fee and comply with additional substantive terms that require them to modify their product offerings, limit their fees, and assess the creditworthiness of consumers before charging overdraft fees. That is not a choice TILA requires them to make.

13. The Final Rule is effective on October 1, 2025. Given the imminence of that compliance date and the complicated nature of this change, the MBA's members over $10 billion must start now if they are to be ready to comply with the Final Rule by its effective date.

14. Complying with the Final Rule requires banks that decide to offer discretionary overdraft services above their "breakeven" cost to design a separate overdraft "credit" account governed by Regulation Z. This necessarily involves reprogramming the bank's deposit systems to route overdraft "credit" into a separate account. Furthermore, to comply with Regulation Z, banks will have to create a variety of disclosures, calculate the annual percentage rate, and establish procedures designed to ensure that those disclosures are accurate and provided to consumers in a timely fashion. Banks that permit consumers to link their deposit account to a debit card (or another card subject to the CARD Act) must conduct ability-to-pay determinations.

[1] Citations of the Code of Federal Regulation include those that the CFPB has updated in the Final Rule.

which involves collecting and analyzing their customers' financial information as part of a new underwriting process. This process would require the creation of databases to upload and collect the necessary documentation and hiring of personnel to perform underwriting. It also requires extensive employee training and establishing new compliance management procedures.

15. Banks that choose to offer discretionary overdraft services at their "breakeven" cost must expend resources determining what that cost is under the CFPB's criteria (which, as already stated, significantly understates the cost of providing discretionary overdraft services). This requires that banks aggregate and document their "total direct costs and charge-off losses for providing [discretionary overdraft services] to all accounts open at any point during the previous 12 months." Final Rule at 106.

16. In addition, banks that charge their "breakeven" cost or the CFPB's $5 fee cap must significantly change their account offerings and business strategy to offset lower overdraft fee revenue. Some banks will have to change the types of accounts they offer and restrict the availability of discretionary overdraft services to certain qualified customers. This includes, for example, eliminating free-checking for some or all customers and/or imposing monthly account servicing fees for low- or negative-balance accounts as well as charging or raising fees for other services unrelated to discretionary overdraft services. Likewise, some banks that have adopted consumer-friendly overdraft policies such as *de minimis* negative balance or transaction amounts or daily overdraft fee limits will be forced to eliminate or scale back those policies. Each of these changes, in turn, require upfront analyses by business and legal personnel, and then considerable implementation work on the back-end, such as making system changes and testing in operating systems, revising policies and procedures, updating account agreements, issuing new overdraft fee disclosures to existing customers (including the CFPB's model A-9), revising

marketing materials, training retail employees in the branch and call centers, and conducting additional compliance management and audit reviews.

17. The MBA anticipates the Final Rule will cause economic injury to financial institutions with assets above $10 billion unless it is preliminarily enjoined. Preliminarily enjoining the Final Rule would prevent those MBA members from incurring more unrecoverable compliance costs, while vacating the Final Rule would redress the economic injury on a more lasting basis.

18. In addition, many of the MBA's members with assets under $10 billion have expressed concerns about how the Final Rule will harm their customers and put smaller banks at a competitive disadvantage. Specifically, these smaller banks anticipate that the Final Rule's fee cap may cause customer attrition and lead them to charge or raise other fees to compensate for the loss of revenue. Compared to larger banks, smaller banks are less able to absorb the reduction in overdraft fee revenue from lower overdraft fees, even absent a price cap imposed by law. In addition, if smaller banks decide to reduce the fee they charge for discretionary overdraft services, they may limit which customers qualify for discretionary overdraft services, thereby reducing discretionary overdraft liquidity for customers who lack access to credit. By compelling banks (directly and indirectly) to reduce or eliminate discretionary overdraft liquidity, the CFPB will eliminate a financial lifeline to many consumers who may have no or limited access to credit. These consumers are currently able to use discretionary overdraft services to complete various essential financial transactions, such as paying their rent, utilities, or car payments, when they are short on funds. The Final Rule will force many of these customers to instead turn to much more expensive, and unregulated, alternatives such as payday lenders or loan sharks.

19. I declare under penalty of perjury, this 18th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Gordon Fellows
Mississippi Bankers Association

# DECLARATION OF ARVEST BANK

I, Kevin Sabin, Chairman and CEO of Arvest Bank ("Arvest"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently Chairman and CEO of Arvest, an Arkansas state-chartered bank and a plaintiff in this lawsuit. I have been personally involved in efforts to evaluate the new rulemaking titled Overdraft Lending: Very Large Financial Institutions, posted on the CFPB's website on December 12, 2024 (hereinafter "Final Rule"), and its impact on Arvest. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Mississippi Bankers Association, Consumer Bankers Association, American Bankers Association, and America's Credit Unions, as well as Arvest Bank, Bank of Franklin, and The Commercial Bank. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge and investigation.

## Arvest's Banking Services and Discretionary Overdraft Service

2. Arvest is a member of the American Bankers Association and the Consumer Bankers Association. Arvest is headquartered in Fayetteville, Arkansas with full service branches in Arkansas, Oklahoma, Missouri, and Kansas. Arvest currently has assets in excess of $10 billion and is classified as a Very Large Financial Institution under the Final Rule.

3. Arvest strives to provide a wide range of products and services to its customers at affordable prices. In furtherance of this mission, Arvest offers discretionary overdraft services to customers with checking accounts, and maintains a generous deposit account acceptance practice. Historically, Arvest has not required consumers to achieve a minimum qualifying score through ChexSystems or other deposit credit reporting agencies in order to open a deposit

account. This enabled consumers with low scores who have been traditionally excluded from other mainstream banks to have access to low-cost financial services, including discretionary overdraft services. Each type of checking account Arvest offers allows customers to use a debit card in order to more easily make purchases.

4. Arvest's discretionary overdraft service is provided as a standard deposit account feature and does not require a separate application by the consumer. Arvest's deposit account agreement, attached hereto as Exhibit A, sets forth the terms governing Arvest's discretionary overdraft service. As is standard in the industry, the account agreement grants Arvest discretion to cover a customer's overdraft and does not confer a right upon the customer to incur a debt. Specifically, the account agreement provides that Arvest "may, in [its] sole discretion, permit [the customer's] Account to be Overdrawn up to the applicable overdraft limit for [the customer's] Account." Ex. 1 at 6. Furthermore, under the account agreement, Arvest retains the right to recover any unpaid overdraft (and overdraft fee) upon demand, and it is Arvest's practice to offset the overdrawn negative balance when new funds are deposited. To that end, Arvest's account agreement requires that the customer "promptly pay the amount of any Overdraft and any applicable fees without further notice or demand." *Id.* at 6–7.

5. Although all of Arvest's checking accounts are available without overdraft coverage, many of our customers opt into that coverage. Many of these customers lack consistent access to credit, and thus use discretionary overdraft services as a source of short-term liquidity. In fact, only 17% of Arvest's customers maintain a savings account of at least $500 with Arvest, and only 19% of our customers have Arvest credit cards.

6. Arvest's discretionary overdraft service has long had a number of pro-consumer features that reduce both the incidence and amount of overdraft fees. For decades, Arvest's

overdraft fee has been $17, which is considerably lower than the median national overdraft fee rate. In addition, Arvest's policy is that a customer must exceed both a *de minimis* negative balance and transaction amount before overdraft fees are charged. Arvest maintains a limit of four overdraft fees that may be charged daily, and does not charge an additional fee for accounts that remain negative for an extended period of time. Furthermore, Arvest maintains very generous fee refund practices to assist customers who may have incurred unplanned or unintentional fees. And in cases where an overdraft is not covered (resulting in a declined transaction), Arvest does not charge non-sufficient funds fees. These generous overdraft policies are consistent with Arvest's goal of making overdraft services accessible to retail customers who may otherwise lack access to banking and credit services.

7. Arvest customers who wish to avoid the possibility of incurring overdraft fees may either choose to opt out of overdraft protection or enroll in Arvest's "Bright Solutions" account, a checkless account that does not provide any overdraft coverage or charge any overdraft fees.

**Arvest's Non-Recoverable Compliance Costs**

8. To date, Arvest has incurred approximately $56,000 in costs reviewing and assessing the proposed rule and Final Rule and their potential impact on Arvest, including Arvest's current and future business plans.

9. As set forth below, the Final Rule will require Arvest to make substantial changes to its account offerings and incur significant internal and third-party vendor costs associated with information technology, compliance, deposit operations, training, and legal in the near term in order to meet the October 1, 2025 implementation date. Arvest will have to incur significant costs analyzing the impact of the price cap on its discretionary overdraft service and deposit

account services in order to determine what changes must be made to the discretionary overdraft service it offers.

10. Arvest will no longer be able to offer its discretionary overdraft service with fees set at $17. Instead, it will be compelled to use the CFPB's $5 fee cap because it lacks the technology infrastructure to reliably calculate its own breakeven cost or comply with the burdensome requirements associated with charging an above-breakeven fee. The compliance costs and technology programming requirements needed to conform Arvest's overdraft program to the Final Rule's requirements outside the safe harbor price cap would be time-consuming and are likely cost-prohibitive. In addition, the Final Rule's requirement that amounts paid into overdraft be kept in a separate account would result in increased account maintenance costs. The Final Rule's prohibition on offsets would also significantly increase the potential for charge-off losses.

11. In order to offer discretionary overdraft services at the CFPB's $5 fee cap, Arvest will likely have to overhaul its account offerings and business strategy. This includes changing the types of accounts Arvest offers and restricting the terms under which discretionary overdraft services are offered to Arvest customers.

12. These changes require upfront analyses by business, compliance, and legal personnel, and then considerable implementation work on the back-end, such as collaborating with third-party vendors, making system changes and testing in its core operating system, revising policies and procedures, updating account agreements, issuing new overdraft fee disclosures to existing customers (including the CFPB's model A-9), revising marketing materials, training retail employees in the branch and call-centers, and conducting additional compliance management and audit reviews.

13. Arvest must begin incurring these costs now in order to comply with the Final Rule when it becomes effective on October 1, 2025 because it will need to change its account agreements for both new and existing customers, send the updated account agreements to existing customers to provide sufficient notice of these substantive changes to Arvest's overdraft policies, modify the programming of its core operating system, revise the algorithm used to determine whether to pay a discretionary overdraft and test its accuracy and effectiveness, and revise its notices. In addition, Arvest must prepare new policies and procedures and train its branch and call-center employees. None of this happens overnight, and preparations must begin now in order to ensure compliance by October 1, 2025.

14. As an additional cost of the Final Rule, Arvest will likely experience account attrition and revenue reduction if customers who previously used overdraft coverage are no longer able to do so.

* * * * *

15. Arvest anticipates that it will continue to incur non-compensable costs complying with the Final Rule unless the Final Rule is preliminarily enjoined. Preliminarily enjoining the Final Rule would prevent Arvest from incurring more unrecoverable compliance costs. Vacating the Final Rule would address the economic injury on a more lasting basis and ensure that Arvest can continue offering discretionary overdraft services to all deposit account customers.

16. I declare under penalty of perjury, this 17th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/

Kevin Sabin
Arvest Bank

# EXHIBIT 1

ARVEST BANK MEMBER FDIC

# Deposit Account Agreement and Disclosure

## Effective [MONTH DAY], 2022

Please read this Deposit Account Agreement and Disclosure carefully and retain it for your future reference.

**Important Note: This Deposit Account Agreement and Disclosure is subject to Binding Arbitration and a Class Action Waiver. The Terms of the Arbitration and Class Action Waiver are in Section 5 of this Deposit Account Agreement and Disclosure. Unless you Opt-Out of Arbitration Within 30 Days as Explained in Section 5.3 ("Opt-Out Procedures"), Section 5 May Require Individual Arbitration for Any Dispute That You Assert Against Us and May Limit Our Liability to You.**

## 1. Introduction

This Deposit Account Agreement and Disclosure contains the terms, conditions, and disclosures related to deposit accounts that you open or have with us.

When you see the words, "we", "us", or "our", it refers to Arvest Bank, its affiliates, successors, assignees, agents, or service providers. When you see the words "you" or "your", it refers to the owner of a deposit account and your personal representatives, executors, administrators, and successors.

When you see the word "Agreement", it refers to this Deposit Account Agreement and Disclosure, the signature card, a rate and fee schedule (may also be in the form of a Rate and Fee Schedule and also referred to as a Time Certificate of Deposit or a Confirmation of Time Deposit, collectively referred to as "Schedule"), Truth in Savings disclosures, a Funds Availability Policy Disclosure, an Electronic Funds Transfer Agreement and Disclosure, and any other document we may provide you from time to time in connection with a deposit account you open or have with us.

If there is an inconsistency in the documents comprising this Agreement, the more specific document controls.

By opening or continuing to have a deposit account with us, you agree to be bound by this Agreement, as we may amend from time to time. We may amend this Agreement without prior notice to you unless we are required to notify you.

### 1.1 Definitions

Here are some important terms that we use throughout this Agreement:

**Account**: Any deposit account, such as a checking or savings account, you open or have with us that this Agreement covers.

**ACH (Automated Clearing House)**: Funds transferred to or from your Account through an automated clearing house network. Common examples include direct deposits of payroll, pensions, or government benefits, like Social Security. We may also refer to ACH as automatic payments.

**ATM (Automated Teller Machine)**: Electronic device that performs many banking services, including withdrawals and balance inquiries.

**Available Balance**: Amount of money you have in your Account at any given time that is available for you to use or withdraw. We use your Available Balance to authorize your transactions throughout the day and determine whether you have sufficient funds to pay your transactions.

**Average Daily Balance**: One of the methods we may use to determine the balance in your Account that earns interest. It involves the application of a periodic rate to the average daily balance in your Account for the period, determined by adding the full amount of principal in your Account for each day of the period and dividing that figure by the number of days in the period.

**Business Day**: Monday through Friday, excluding federal and Arkansas legal holidays.

**Credit**: An increase to your balance.

**Daily Balance**: One of the methods we may use to determine the balance in your Account that earns interest. It involves the application of a daily periodic rate to the full amount of principal in your Account each day.

**Debit**: A decrease to your balance.

**Direct Deposit**: Automatic preauthorized deposit made through the ACH network to your Account by someone else, such as an employer issuing payroll or government benefits.

**Individual Account**: An Account in the name of only one depositor who may write checks against the Account or withdraw money, regardless of who actually owns the funds.

**Ledger Balance**: Balance in your Account after we have posted all credits and debits to your Account. We use your Ledger Balance to determine Overdrafts.

**Online Banking Services**: Online banking service or mobile application that you can use to access your Account, view information about your Account, and conduct certain transactions.

**Overdraft**: Occurs if during the end of Business Day processing, your Ledger Balance is less than the amount we need to pay the transaction presented to us for payment, but we pay the transaction anyway causing you to have a negative Ledger Balance.

**Overdrawn**: When your Account has a negative Ledger Balance.

**Preauthorized Transfer**: Includes any arrangement by us to a pay a third party from your Account on written or oral instruction (including an order received through an ACH of any arrangement by us to pay a third party to your Account at a predetermined time or on a fixed schedule).

**Posted or posted**: Transactions that are paid from or deposited to your Account. Posted transactions will either increase or decrease both your Available Balance and your Ledger Balance.

**Pending**: Transactions that we receive notice of and are scheduled to post to your Account. Pending transactions affect your Available Balance, but not your Ledger Balance.

**Schedule**: Form that includes rates, fees, and charges applicable to your Account or Account services, which we may change from time to time. You can request a Schedule from us or access it on our website and at our offices. If you open multiple Accounts, you may receive a Schedule for each Account.

# 2. Account Overview

## 2.1 How to Contact Us

You may contact us with any questions or concerns about your Account. The best way to do that is by calling (866) 952-9523. You may also contact us by visiting any Arvest branch.

## 2.2 Interest Disclosures

If your Account earns interest, the following terms apply.

### 2.2.1 Payment of Interest

We pay interest at the annual rate specified on the Schedule, which does not reflect the effect of compounding. The Schedule also includes the frequency of interest payments, the frequency of any compounding and crediting, the interest accrual basis, the balance on which we pay interest, and any minimum balance requirements.

#### 2.2.2 Minimum Balance Requirements

The Schedule may specify a minimum balance that we require you to maintain in your Account. If you do not maintain the minimum balance during the specified period, we at our option, may not pay interest on your Account or may charge you a fee for that period. You should carefully review any minimum balance requirements on the Schedule.

#### 2.2.3 Initial Interest Rate

The initial interest rate is the current annual rate of interest that we pay on the specified balance in your Account. We may pay interest at different rates, depending on the amount of funds deposited into your Account and the type of depositor (individual, business, non-profit organization, etc.).

#### 2.2.4 Interest Compounding and Crediting

The Schedule shows any interest compounding and crediting frequency for your Account. Compounding generally means that interest is being accrued on earned interest. Interest may be compounded more frequently than interest that is credited to your Account.

#### 2.2.5 Interest Accrual

We may accrue interest on your Account more frequently than we pay or credit interest. The interest that has been calculated, but not paid to your Account, is called accrued unpaid interest.

## 3. General Rules Governing Your Account

### 3.1 Fees and Charges for Your Account

Subject to applicable law, you agree to pay us the fees and charges shown in the Schedule. You authorize us to charge your Account for payment of such fees and charges whether or not each charge or fee results in an Overdraft. If your Account becomes overdrawn as a result of a fee, you will not be assessed an overdraft fee. Existing and future charges may be based on the overall costs of providing Account services or the direct cost or expense associated with providing the particular service involved. The charges may be based on various factors including but not limited to consideration of profit, competitive position, deterrence of misuse of Account privileges by customers, changes in applicable regulations, and the safety and soundness of our institution. We will notify you of the changes if we are required to do so.

### 3.2 Deposits to Your Account

The following terms apply to deposits to your Account.

#### 3.2.1 Endorsements

You authorize us to accept transfers, checks, and other items for deposit to your Account if they are made payable to, or to the order of, one or more of you, whether or not you endorse them. You authorize us to supply missing endorsements, and you warrant that all endorsements are genuine.

All checks and other items deposited to your Account should be endorsed payable to the order of us for deposit only, followed by your signature and Account number. All endorsements must appear on the back of the check or other item within the first 1 ½ inches from the left side of the item when looking at it from the front. Endorsements should be in black ink.

While we may accept non-conforming endorsements, you are responsible for any loss we incur due to the delay in processing or returning the item for payment.

#### 3.2.2 Final Payment

All non-cash items (for example, checks) deposited to your Account are posted subject to us receiving final payment

from the payor bank. When that happens, the item becomes a collected item. If we do not receive final payment or if any item you have **deposited or cashed** is charged back to us for any reason, you authorize us to charge any of your Accounts, at any time and without prior notice to you, for the amount of the returned item, any interest paid on that item, and any fee we pay or incur. If an item to be charged back is lost in the process of collection, or unavailable for return, we may rely on a photocopy of the item or on any other generally accepted form of notification of the return, to charge you or any of your Accounts for the amount of the returned item. We reserve the right to refuse any item for deposit to your Account.

#### 3.2.3 Notice of Stop Payment; Legal Process; Setoff

A check we receive before the close of the Business Day may be subject to any stop payment order we receive, legal process that is served on us, or setoff we exercise prior to a cutoff hour listed in this Agreement, and if no cutoff hour is given, no later than the close of the next Business Day. Additional limitations regarding stop payment orders, the right of setoff, or other legal process may be found elsewhere in this Agreement.

#### 3.2.4 Direct Deposit

If we offer Direct Deposit to your Account of Social Security payments and you want to cancel the Direct Deposit, we may require you to provide us with 30 days' notice prior to the scheduled Direct Deposit. If amounts we deposit must be returned to the government for any reason, you authorize us to deduct the amount(s) from your Account as provided in Section 3.2.2 ("Final Payment"). .

#### 3.2.5 Crediting of Deposits

We will provide you with a Funds Availability Policy Disclosure that reflects our policies relating to the availability of deposited funds.

#### 3.2.6 Substitute Checks and Electronic Files Pertaining to Original Checks

If you deposit a "substitute check" (as defined in Regulation CC § Section 229.2(aaa)) or a purported substitute check into your Account, you agree to reimburse us for losses, costs and expenses we may pay or incur associated with the item not meeting applicable substitute check standards or from duplicate payments associated with the item. If you provide us with an electronic representation of a substitute check for deposit into your Account instead of an original check, you agree to reimburse us for losses, costs, and expenses we may pay or incur associated with the substitute check resulting from the electronic representation not meeting applicable substitute check standards or from duplicate payments associated with the item.

### 3.3 Withdrawing from Your Account

The following terms apply to withdrawals from your Account.

#### 3.3.1 Manner of Withdrawal

You may make withdrawals from your Account in any manner that we permit for the type of Account that you have. We will post withdrawals by mail to your Account as of the day we process the transaction. We may refuse to accept any check other than standard checks we provide or approve in advance. We may restrict withdrawals and transfers from your Account, as provided in this Agreement, the Schedule, or by applicable law.

#### 3.3.2 How We Calculate the Available Balance in Your Account

We calculate your Available Balance throughout the day and use your Available Balance to authorize certain transactions, like debit card purchases and ATM withdrawals. In general, we calculate your Available Balance throughout the day by:

1. Starting with the ending Ledger Balance from the prior Business Day;
2. Subtracting the amount of any holds on your Account (including holds on deposits and any holds placed as a result of legal process, such as garnishments or liens);

3. Adding the amount of deposits immediately available for your use (this includes cash deposits, Direct Deposits, and the amount of any deposited check we make immediately available to you); and
4. Subtracting the amount of ATM, debit card, and other transactions (except for checks) we have authorized or received but not yet posted since the cut-off time for the last processing cycle.

#### 3.3.2.1 How Debit Card Authorizations Can Affect Your Available Balance

Your Available Balance includes the transaction amounts from debit card purchases we authorized, which may differ from the amount presented to us for payment. For example, the transaction amount we authorized may be higher or lower than the final amount presented to us for payment for a hotel bill, a gasoline purchase, a rental car transaction, or a restaurant check with gratuity added. There may also be times when an ATM or debit card transaction is authorized but we never receive it for payment.

#### 3.3.2.2 Transactions Not Included in Your Available Balance

Your Available Balance does not include every transaction you authorize or we receive during the Business Day. For example, checks you issue and electronic fund transfers you authorize that we have not yet received or that we received during the Business Day that are Pending, will not be included in your Available Balance. We may authorize one or more ATM withdrawals, debit card transactions or other types of transactions, even though your Account has an Available Balance that is insufficient to cover the transaction. Also, your Available Balance may be positive when a transaction is authorized, but your Ledger Balance, which we use to determine Overdrafts, may be negative when the transaction is presented to us for payment.

## 3.4 How We Post Transactions to Your Account

We process transactions to your Account at the end of our Business Day to determine your Ledger Balance.

### 3.4.1 How We Calculate Your Ledger Balance

We update your Ledger Balance at the end of our Business Day, after all transactions are processed and posted. We may process and post debit transactions but not credit transactions on some federal holidays which are considered Business Days to determine your Ledger Balance, in our sole discretion.

Your Ledger Balance does not reflect any transactions that have been authorized and not yet settled, any holds on your Account, or any Pending Credits that have not posted to your Account. For example, while your Available Balance will reflect debit card transactions that have been authorized but not yet presented to us for payment, your Ledger Balance will not. Your Ledger Balance may differ from the amount of your Available Balance, and the order we post transactions to your Account to determine your Ledger Balance may differ from the actual order we receive transactions or the order we display transactions in the Online Banking Services.

### 3.4.2 Posting Order

Currently, when we process transactions at the end of the Business Day, we generally post the most common transactions as follows:

1. First, we add deposits and incoming funds transfers received before the cut-off time for such deposits and transfers. Credits will not be received and posted on some Business Days that fall on federal holidays, as we determine in our sole discretion.
2. Second, we post any transactions or fees originally processed or assessed in the prior Business Day's posting cycle. For example, if a fee was assessed during the prior Business Day's posting cycle, it may not be deducted from the account until the next Business Day's posting cycle (such as an Overdraft fee). If a check was presented during the prior Business Day's posting cycle and there were insufficient funds to pay the check, but we have determined to pay the check in the current Business Day's posting cycle, the amount of the check will be debited.
3. Third, we post Debits from your Account. We post your Debits in categories depending on the type of transaction, generally in the following order:

i. **Instant and Next Day service Zelle® and TransferNow® debit transactions**. We post these transactions in the order we authorize them.
ii. **ATM transactions (including cash withdrawals and transfers between accounts)**. We post cash withdrawals before we post transfers between accounts. We generally post cash withdrawals and transfers between accounts in the order we authorize them.
iii. **Debit Card Transactions**. We generally post these transactions on the day they are presented to us for payment in the order in that we authorize them. We will not post debit card transactions that we have authorized but are not yet presented to us for payment, until the transaction is presented to us for payment.
iv. **Online and mobile transfers other than Zelle® and TransferNow®**. We generally post these transfers in the order we receive them.
v. **Account Information Line (AIL) transfers**. We generally post these transfers in the order we receive them.
vi. **Telephone transfers**. We generally post these transfers in the order we receive them.
vii. **Checks**. We generally post checks in check number order, but we post teller withdrawals first.
viii. **ACH debits**. We generally post ACH debits in the order we receive them. This may be different from the time the debit was initiated. There may also be other exceptions to the posting order of ACH debits. We process and post Zelle® and TransferNow® payments made on the standard 3-day delivery as ACH debits.

This posting order does not cover every type of transaction we may process and some exceptions may apply. You acknowledge and agree that we are allowed to determine and change the categories of transactions, the transactions within a category, the order among categories, and the posting orders within a category. This includes adding or deleting categories and moving transaction types from one category to another. You understand that we may make such changes at any time at our sole discretion. If we make any changes to the categories and posting orders described above, we will provide you with notice of the change.

It is therefore important for you to keep track of the deposits you make and the transactions you authorize to make sure there are sufficient funds in your Account to cover all transactions and any applicable fees. If your Account has insufficient funds to cover a transaction(s) (including any type of debit, withdrawal, or transfer from your Account), you agree that we are allowed to pay or authorize some or all of those transactions or decline or return some or all of those transactions, in our sole discretion.

### 3.4.3 Overdrafts and Overdraft Coverage

If we determine during end of Business Day processing that paying a transaction(s) will overdraw your Account, we will:

1. Check to see if you have enrolled in our SafetyLink program. If you have and we authorize the transfer needed to cover the Overdraft under the terms of the SafetyLink program, we will transfer funds from the linked SafetyLink account to the Overdrawn Account.
2. Check to see if we approved your Account for and you either have Basic Overdraft Coverage or Extended Overdraft Coverage. If so, and the amount needed to cover the Overdraft is available under Basic or Extended Overdraft Coverage, we may, in our sole discretion, permit your Account to be Overdrawn up to the applicable overdraft limit for your Account.
3. If neither SafetyLink, Basic Overdraft Coverage, or Extended Overdraft Coverage apply to your Account, we may, in our sole discretion, pay the transaction instead of returning it unpaid. This will overdraw your Account. Alternatively, we may, in our sole discretion, return any of the transactions presented for payment as unpaid, or otherwise refuse to pay the transaction, as described in Section 3.4.4 (“Returned Transactions”).
4. You agree that, if we pay an Overdraft, we may charge you a fee, as allowed by applicable law and as set

forth in the Schedule. You also agree that you will promptly pay the amount of any Overdraft and any applicable fees without further notice or demand. We may charge you additional service charges if you fail to promptly pay these amounts. We may use subsequent deposits and other Credits to your Account to cover any Overdraft amounts or applicable fees.

#### 3.4.4 Returned Transactions

If your Ledger Balance is less than the amount we need to pay a transaction presented to us for payment, we may, in our sole discretion, return any of the transactions presented to us for payment as unpaid, or otherwise refuse to pay the transaction instead of allowing the transaction to overdraw your Account. Certain types of Accounts may be subject to an insufficient funds ("NSF") fee for transactions that are returned. Refer to the fee schedule applicable to your Account for information concerning fees.

We may return or refuse to pay any transaction at any time if your Ledger Balance is insufficient to pay that item, even if we have previously permitted Overdrafts. You are not entitled to rely on any prior act by us with respect to your Account, and our decision to pay Overdrafts does not establish a course of dealing between you and us or modify the terms of this Agreement.

Transactions that would have overdrawn your Account that we return as unpaid may be represented for payment multiple times. We will determine whether to pay or return the transaction each time it is presented to us for payment, which may result in your Account being charged multiple times for returning the item or other fees.

#### 3.4.5 Notice Requirements

Federal regulations require us to retain the right to require you to give us at least seven (7) days' written notice before you withdraw from a savings, negotiable order of withdrawal (NOW), or money market account. Although we usually pay withdrawals or checks without notice on these accounts, doing so does not mean that we give up this right.

#### 3.4.6 Postdated Items

You agree that when you write a check, you will not date the check in the future. If you do and the check is presented to us for payment before the date of the check, we may pay it or return it unpaid. You agree that if we pay the check, we will post the check to your Account on the date we pay the check, even though the posting date is before the date of the check. You also agree that we are not responsible for any loss to you in doing so.

We will not honor a postdated check if we receive advance notice from you at such a time and in such a manner that gives us a reasonable opportunity to act. You must give us advance notice in writing, and you must specify the date, amount, and number of the check, along with the name of the payee. Notices are effective for the time periods described in Section 3.16 ("Stop Payment Orders"). You agree that we may return a postdated check to the presenter.

### 3.5 Power of Attorney

The person executing a power of attorney will be referred to as the principal and the person acting for the principal as the agent. We may refuse to comply with or reject a power of attorney for reasonable cause, or until we receive an affidavit from the agent stating that the Power of Attorney presented is a true copy and that, to the best of the agent's knowledge, the principal is alive and that the relevant powers of the agent have not been altered or terminated.

### 3.6 Signatures and Facsimile Signatures

You recognize that we have adopted automated collection and payment procedures so that we can process the greatest volume of items at the lowest possible cost to our customers. In light of this, you agree that we do not fail to exercise ordinary care in paying an item solely because our procedures do not provide for the sight examination of items with a face amount below an amount specified by us from time to time.

You authorize us to store and use signature card information in any reasonable form we deem necessary, including any digitized signature capture process. If you use a facsimile signature or other form of mechanically reproduced

signature (such as, but not limited to, desktop publishing, digitized, or computer software generated signature), you agree you have the sole responsibility for maintaining security of the facsimile or mechanically reproduced signature and the device by which the facsimile or mechanically reproduced signature is affixed. You also agree you have the entire risk for any unauthorized use of the facsimile or mechanically reproduced signature, whether or not you are negligent.

You agree that no facsimile or mechanically reproduced signature we have been authorized to honor may be considered a forgery or an unauthorized signature, but that such facsimile or mechanically reproduced signature is effective as your signature or endorsement whether or not you have been negligent. You also agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure (including reasonable attorney's fees) we or you may suffer or incur as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile or mechanically reproduced signature or the device by which it is affixed. If you use any form of facsimile or mechanically reproduced signature device, you agree to give us a sample if we request one.

## 3.7 Remotely Created Checks

If we are unable to enforce presentment and transfer warranties on remotely created checks under Regulation CC, and you voluntarily give information about your Account (such as our routing number and your account number) to a party who is seeking to sell you goods or services, and you do not physically deliver a check to the party, any debit to your Account initiated by the party to whom you gave the information is deemed authorized by you.

## 3.8 Electronic Check Conversion

You may authorize a merchant to use your check as a source of account information to initiate an electronic withdrawal from your account. The merchant uses the check information, along with the transaction amount, to initiate an ACH debit transaction. The transaction is electronically transferred through the ACH system and the funds will be debited directly from your Account and deposited automatically into the merchant's account. After the merchant gathers information from the check, the merchant should mark it void and return it to you.You should sign and receive a receipt documenting the transaction. This type of transaction generally results in funds being removed from your Account faster than a normal check transaction. Your statement from us will include a description of the transaction. Checks used in these types of transactions will not be returned with your statement. The Electronic Funds Transfer Act governs this type of electronic funds transfer and the transfer is subject to the Electronic Funds Transfer Agreement and Disclosure we provide you.

## 3.9 Re-presented Checks

If a merchant electronically re-presents a check returned due to insufficient or uncollected funds, the Electronic Funds Transfer Act does not govern the transaction. Checks involved in this type of transaction will not be included with your statement. You may authorize a merchant to electronically collect a fee associated with the re-presentment of a check. If a merchant does this and debits the fee as an electronic funds transfer from a consumer account, the fee transaction is covered by the Electronic Funds Transfer Act and subject to the Electronic Funds Transfer Agreement and Disclosure we provide you. Your statement from us will include a description of the transaction.

## 3.10 Check Legends; Special Purpose

We may disregard information on any check or item other than the signature of the drawer, the identification of the drawee financial institution and payee, the amount, the endorsements, and any other information that appears on the Magnetic Ink Character Recognition (MICR) line. We are not responsible to act on, or for failure to notify you of restrictive language placed on checks or other items, including but not limited to terms such as, "Void after 90 Days," "Paid in Full," "Two Signatures Required," "Void Over $100" or similar statements.

In accordance with reasonable banking standards, most checks and other items are processed through automated processing and, except in limited circumstances and in our discretion, most items are not individually examined. You agree that we act within reasonable banking standards by processing most checks and other items through

automated processing systems.

We will not monitor nor will we comply with any legends included on any checks. Signature cards, banking resolutions, or other documents may contain language requiring two or more signatures for items drawn on your Account or an indicating that the Account is established for a special purpose. You agree that any such language or indication is solely for personal or internal control purposes. As long as an item bears at least one authorized signature, we are not liable to you if we pay an item which does not have any additional signature(s) or which is not used for the special purpose indicated.

## 3.11 Non-Customer Check Cashing Fee and Identification

If a person who is not a deposit customer of ours presents a check drawn against one of your Accounts for payment over the counter, we may require that person to provide us with identification that meets our standards. This includes a thumbprint or fingerprint from the person. We may, subject to applicable law, charge the person a service charge for cashing the check. You agree that if the person refuses to comply with our identification standards or refuses to pay the service charge, we may dishonor the check and we have no liability to you for refusing to cash the check.

## 3.12 Stale Checks

We reserve the right to pay or dishonor a check more than six (6) months old without prior notice to you.

## 3.13 Checking Accounts

If your Account is a checking account, the following terms may apply.

If we offer NOW accounts, the Account must consist solely of funds in which the entire beneficial interest is held by one or more individuals in an individual capacity, a sole proprietor, or a governmental unit, but not professional corporations or business partnerships. A NOW account may also be held by a for-profit organization serving in a fiduciary or trustee capacity for an entity that is itself permitted to hold a NOW account. Otherwise, an organization may hold a NOW account only if it is operated primarily for religious, philanthropic, charitable, educational, or other similar purpose.

## 3.14 Savings Accounts

If your Account is an interest-bearing Account and is not a NOW account or Time Deposit, the following terms may apply:

### 3.14.1 Transfers and Withdrawals

If your Account is a savings or money market deposit account, you may make no more than six (6) transfers or withdrawals during any one (1) calendar month or statement cycle (the period from one statement to the next) or similar period of at least four weeks, to another of your Accounts with us or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction or by check, draft, debit card, or similar order made by you and payable to third parties.

### 3.14.2 Excess Transactions

If you exceed the number of allowable transfers and withdrawals described in Section 3.14.1 (“Transfers and Withdrawals”), we may charge you a fee for each excess transfer or withdrawal. Refer to the Truth in Savings disclosure applicable to your Account for details concerning excessive withdrawal fees.

You may make unlimited withdrawals (payments directly to you or transfers of funds from your Account to any of your other deposit accounts or loan accounts with us), either in person at our locations, by mail, messenger, telephone (via check mailed to you), or use of an ATM card (if applicable), or any other electronic system option.

## 3.15 Time Deposits

A Time Deposit is an Account where you agree to leave your funds in the Account until the maturity date of the Account. Time Deposits are often referred to as "Certificates of Deposit" or "CDs," even if you are not issued a certificate.

If your Account is a Time Deposit, you agree to keep the funds on deposit until the maturity of your Account. If your Account has not matured, any withdrawal of all or part of the funds from your Account may result in an early withdrawal penalty. We will consider requests for early withdrawal and, if granted, the penalty provided in the Schedule will apply.

### 3.15.1 How We Calculate the Early Withdrawal Penalty

We calculate the early withdrawal penalty as a forfeiture of part of the accrued interest that has or would be earned on your Account. If your Account has not yet earned enough interest so that the penalty can be deducted from earned interest, or if the interest already has been paid, the difference will be deducted from the principal amount of your Account. For fixed rate Accounts, we will use the rate in effect for your deposit.

### 3.15.2 When We May Not Charge You an Early Withdrawal Penalty

We may let you withdraw money from your Account before the maturity date without an early withdrawal penalty:

1. When one or more of you dies or is determined legally incompetent by a court or other administrative body of competent jurisdiction; or
2. When your Account is an Individual Retirement Account (IRA) established in accordance with 26 U.S.C. § 408 and the money is paid within seven (7) days after your Account is opened; or
3. When your Account is a Keogh Plan (Keogh), if you forfeit at least the interest earned on the withdrawn funds; or;
4. If the time deposit is an IRA or Keogh Plan established pursuant to 26 U.S.C. § 408 or 26 U.S.C. § 401, when you reach age 59 ½ or become disabled; or
5. Within an applicable grace period (if any).

## 3.16 Stop Payment Orders

For all stop payment order requests, you must provide the date, the amount, and the number of the item or authorization, together with the name of the payee. If you give us incorrect information, we will not be liable for failing to stop payment on the item or authorization. Our acceptance of a stop payment order will not constitute a representation that the item or authorization has not already been paid or that we have a reasonable opportunity to act on the order.

You may not request a stop payment on:

1. An official, certified, cashier's, or teller's check issued by us, or request us to stop payment if we have otherwise become accountable for the item or authorization.
2. Checks governed by a separate agreement, such as a check guaranty agreement.
3. An item or authorization after acceptance of the same by us.

Subject to certain limitations, you may order us to stop payment on any check, ACH, Preauthorized Transfer, or other item payable from your Account, whether drawn or authorized by you or any other Account owner, as follows:

### 3.16.1 Stopping Payment Against a Check or Other Item

A stop payment request against a check or other item payable from your Account will be effective if we receive the order at such time and in such manner to give us a reasonable opportunity to act on the order. A stop payment order against a check or other item payable from your Account is effective for six (6) months. A stop payment order against a check or other item payable from your Account may be renewed for additional 6 month periods if renewed during a period within which the stop payment order is effective.

### 3.16.2 Stopping Payment Against an ACH or Electronic Funds Transfer

A stop payment order against an ACH or electronic funds transfer may be honored if received at least three (3) Business Days before the scheduled transfer date. If we honor a stop payment request against an ACH or electronic funds transfer received on or within 3 Business Days of the scheduled transfer, we do so without any liability or responsibility to any party having any interest in the entry. A stop payment order against an ACH or electronic funds transfer is effective until the earlier of when:

1. You withdraw the stop payment order; or
2. The debit entry is returned, or where a stop payment order is applied to more than one debit entry under a specific authorization involving a specific party, all such debit entries are returned.

If you request to stop all future payments pursuant to a specific ACH or electronic funds transfer authorization involving a particular party, we may require you to confirm in writing that you have revoked such authorization.

## 3.17 Multi-Party Accounts

The following terms apply to multi-party accounts:

### 3.17.1 Joint Account Ownership

An Account with two or more Account owners is a joint account. Unless you designate otherwise on a signature card, joint Account owners will be considered joint tenants with right of survivorship. Upon the death of one of the joint Account owners, that person's ownership interest in the Account will immediately pass to the other joint Account Owner(s).

### 3.17.2 Authority to Act

Each joint Account owner, without the consent of any other Account owner, may, and hereby is authorized by every other joint Account owner, to make any transaction permitted under this Agreement, including without limitation:

1. To withdraw all or any part of the Account funds;
2. To pledge the Account funds as collateral to us for any obligation, whether that of one or more Account owners or of a third party;
3. To endorse and deposit checks and other items payable to any joint Account owner;
4. To give stop payment orders on any check or item, whether drawn by that Account owner or not;
5. To consent to or revoke consent to payment of service charges on Overdrafts that result from ATM transactions or one-time debit card transactions under the Extended Overdraft Coverage program; and
6. To close the Account.

Each joint Account owner is authorized to act for the other Account owner(s) and we may accept orders and instructions regarding the account from any joint Account owner. If we believe there is a dispute between joint Account owners or we receive inconsistent instructions from the Account owners, we may suspend or close the Account, require a court order to act, or require that all joint Account owners agree in writing to any transaction concerning the Account.

### 3.17.3 Joint and Several Liability

Obligations of joint Account owners under this Agreement are joint and several. This means that each joint Account owner is fully and personally obligated under the terms of this Agreement, including without limitation Overdrafts and Account charges, and fully and personally obligated to pay, upon demand, any and all Debit balances, fees and charges, and our reasonable attorneys' fees and costs and other expenses of collection.

If you establish a joint Account without the signature of the other joint Account owner(s), you agree to hold us harmless for our reliance on your designation of the other joint Account owner(s) listed on our documents. Your

Account is also subject to the right of setoff as set forth in Section 3.17.4 (“Minors”).

### 3.17.4 Minors

An Account held jointly between a minor with a parent or guardian is under the same obligations under this Agreement.

Each parent or guardian will be jointly and severally liable for, and will fully and promptly pay or otherwise discharge, any and all indebtedness, liabilities or other obligations arising by virtue of actions or transactions taken by or involving the minor which relate to or affect us or the Account. This includes, but is not limited to, actions resulting in Overdrafts or accommodation endorsements by the minor or the third party instruments not deposited in the Account. The obligation of such parent or guardian is an absolute, unconditional and continuing guaranty which will not terminate until all amounts owed to us have been paid in full.

You also agree that any other Accounts maintained by the parent or guardian with us may be set off against any and all liabilities of the minor and that, in any action brought to recover with respect to such liabilities, we will be entitled to our reasonable attorney’s fees, court costs and other expenses incurred.

Any minor listed as an Account owner with a parent or guardian will have full access, including electronic access, to all Account funds and information relating to the Account. The parent or guardian may wish to maintain a separate deposit account not accessible by the minor.

The following applies if you are a minor and you are the sole and absolute owner of the Account. Your parent or legal guardian may deny your authority to control, transfer, draft on, or make withdrawals from your Account by notifying us in writing. Upon our receipt of such written notice, you may not control, transfer, draft on, or make withdrawals from the Account during your minority unless your parent or legal guardian signs the transfer request, check, draft, item, withdrawal request, or performs any other requested transaction with you. If you die while you are still a minor, the receipt or acquittance of your parent or legal guardian discharges our liability to the extent of the receipt of the acquittance, except that the aggregate discharges under this 6 O.S. section 903.1(D) may not exceed Three Thousand Dollars ($3,000.00).

### 3.17.5 Totten Trust Accounts

A Totten Trust Account is an informal trust account, reflected on our records, but without a written trust agreement, where the Account is owned by the trustee. The beneficiaries have no right to any funds in the Account during the trustee’s lifetime. As theowner of the Account, the trustee may withdraw money from the Account and may, by written direction to us, change the beneficiary underthe Account. When the trustee dies, the Account is owned by the named beneficiary or beneficiaries. If more than one person becomes the owner of the Account upon the death of the Trustee, ownership is as joint tenants with right of survivorship, subject to the rules pertaining to joint account ownership discussed in Section 3.17.1 (“Joint Account Ownership”). If there is no surviving beneficiary upon the death of the last trustee, state law will determine ownership of the funds in the Account.

### 3.17.6 Payable on Death Accounts

**P.O.D. Account.** A Payable on Death (P.O.D.) Account is an account payable to the Account Owner during his or her lifetime. As the owner of the Account, you may withdraw money from the Account and may, by written direction to us, change the P.O.D. payee(s) under the Account. When the Account Owner dies, the Account is owned by the P.O.D. payee(s). If the P.O.D. Account is held by more than oneperson, the Account Owner’s ownership shall be as joint tenants with right of survivorship, subject to the rules pertaining to joint account ownership discussed in Section 3.17.1 (“Joint Account Ownership”). If there is no surviving P.O.D. payee upon the death of the last owner, state law will determine ownership of the funds in the Account.

## 3.18 Additional Account Types

The following terms apply to other deposit Account types:

### 3.18.1 Formal Trust Account

A Formal Trust Account is an Account held by one or more trustees for the benefit of one or more beneficiaries according to a written trust agreement. Upon our request, the trustee(s) will supply us with a copy of any trust agreement covering the Account. We act only as custodian of the trust funds and are under no obligation to act as a trustee or to inquire as to the powers or duties of the trustee(s). The trustee(s) or any person opening the Account, in their individual capacity and jointly and severally, agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or other trustee with respect to the authority or actions taken by the trustee(s) in handling or dealing with the Account.

### 3.18.2 Uniform Transfer to Minors

If you have established an Account as a custodian for a minor beneficiary under our state version of the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act, your rights and duties are governed by the Act. You will not be allowed to pledge the Account as collateral for any loan to you. Deposits in the Account will be held by us for the exclusive right and benefit of the minor. The custodian or any person opening the Account, in their individual capacity, agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or other custodian with respect to the authority or actions taken by the custodian in handling or dealing with the Account.

### 3.18.3 Business Accounts

If the Account is not owned by a natural person for personal use (that is, the Account is owned by a corporation, partnership, limited liability company, sole proprietorship, unincorporated association, etc.), then the Account owner must provide us with evidence to our satisfaction of the authority of the individuals who sign the signature card to act on behalf of the Account owner. On any transactions involving the Account, we may act on the instructions of the person(s) authorized in the resolutions, banking agreement, or certificate of authority to act on behalf of the Account owner. You agree to notify us in writing of any changes in the person(s) authorized or the form of ownership. **If we receive conflicting resolutions or a dispute arises as to authorization with regard to the handling of the Account, you agree we may place a hold on the Account until such conflict or dispute is resolved to our satisfaction and we will not be liable for dishonored items as a result of such hold.**

### 3.18.4 Fiduciary Accounts

With respect to all fiduciary Accounts, including but not limited to estate accounts, guardianship accounts, conservatorship accounts, and any Formal Trust Account, Uniform Transfers to Minors Act Account, or any other agency Account, we reserve the right to require such documents and authorizations as we may deem necessary or appropriate to satisfy that the person(s) requesting or directing the withdrawal of funds held in the Account have the authority to withdraw such funds. This applies at the time of Account opening and at all times after that. We do not monitor the actions of the fiduciary and we are not liable for any unauthorized or fraudulent actions of any fiduciary.

### 3.18.5 Attorney Client Trust Accounts

Subject to applicable law, an Attorney Client Trust or IOLTA Trust Account is an Account set up by an attorney or law firm to hold client or third-party funds in trust, separate from the attorney's or law firm's funds. Upon our request, the authorized signers foran Attorney Client Trust or IOLTA Trust Account will provide documentation required by applicable state law and applicable bar association (or similar entity) rules. If deposits are in the name of third-party payees, we may require evidence and identification for said third party payees. The attorney, law firm, or any authorized individual on the Account agrees to indemnify, defend and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or third party with respect to the authority, actions, or inaction taken by the trustee(s) or authorized individuals in handling or dealing with the Account. Additional account terms are governed by a separate agreement. If this is an IOLTA Trust Account, we will not permit the lawyer or law firm to receive the interest. The interest (minus applicable fees) on an IOLTA Trust Account will be remitted to the designated

organization, pursuant to your instructions and at your request.

### 3.18.6 Real Estate Broker Client Trust Accounts

Subject to applicable law, a real estate broker may open Account(s) to hold client or third-party funds in trust, separate from the broker's funds. If deposits are in the name of third-party payees, we may require evidence and identification for said third-party payees. The broker and any authorized individual on the Account in their individual capacity and jointly and severally, agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any client or third party with respect to the authority, actions or inaction taken by the broker or authorized signer(s) in handling or dealing with the Account. Upon our request, the authorized signer(s) for this type of Account will provide us with any documents required by applicable law or real estate professional rules.

### 3.18.7 Government Accounts

This type of Account is owned by a government or public entity. For this type of Account, you agree to provide us with authorization document(s) (in a form acceptable to us) stating that we are designated as a depository for the funds of the government or public entity and such documentation shall state the individual(s) authorized to act on behalf of the government or public entity and the extent of their authority. We may rely upon such documentation until we receive written notice of a change and new authorization documents. We are not responsible for any transaction conducted by a previously authorized individual until we actuallyreceive written notice that the authorized individual's authority has been revoked. Unless specifically stated otherwise in the authorization document(s), we can rely on one authorization for all Accounts owned by the government or public entity. If required by law, you agree to enter into a Collateral Security Agreement regarding this type of Account.

## 3.19 Wholesale Wire and ACH Transactions

This section discusses our procedures for wire transfers or other transfers not covered by the Electronic Funds Transfer Act. You agree to enter into and comply with our wire transfer (if applicable) agreement and to comply with this section and our security procedures.

You agree that any receiving financial institution (including us) may rely on any account or bank number you provide even if that account or bank number identifies a party other than the person or entity you name in any transfer order.

You understand that Credit we give you with respect to an ACH Credit or wholesale (wire) funds transfer is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive final settlement, you agree that we may receive a refund of the amount credited to your Account in connection with such entry, and the originator of the entry has not paid you the amount of such entry.

We will notify you of the receipt of payments in the Account statements we provide to you. You acknowledge that we will not give you next day notice of receipt of an ACH or wholesale (wire) funds transfer item.

# 4. Your Account Responsibilities

We strive to keep your Account secure and provide you with tools and services to help you manage your Account. However, there are certain things you should do to protect your Account and your funds.

## 4.1 Notify Us if Your Information Changes

You must notify us immediately if there is a change to your name. We may only honor items drawn on the listed Account name.

You must also notify us immediately if there are changes to any contact information you provide us, including your name, telephone number, mailing address, or email address, so that we can continue to provide you with Account statements and important notices concerning your Account. We will attempt to communicate with you only using the most recent contact information you provide us.

You or any person authorized to sign on the Account must notify us in writing if any Account owner or person authorized to sign on an Account dies or is declared incompetent by a court.

## 4.2 Keep Track of Your Transactions, Account Statements, and Available Balance

It is important that you keep track of your transactions and the funds in your Account that are available for you to use or withdraw ("Available Balance") by reviewing your transaction history or using the tools that suit you, such as a check register, to prevent you from overdrawing your Account. It is also important to understand that your Available Balance may not reflect transactions that you have authorized that have not yet been presented to us for payment.

You are responsible for promptly reviewing your Account statements as they are made available to you for errors or unauthorized activity. If you identify an error or unauthorized activity, you must notify us promptly to avoid losing your money.

If you do not notify us of an unauthorized signature or alteration within fifteen (15) calendar days after we send or make a statement (including electronic statements) available to you, you lose your right to assert this claim against us.

Except for transactions covered by the Electronic Funds Transfer Act, you must report any other Account problem to us within sixty (60) calendar days or lose your right to assert the problem against us. Please refer to the Electronic Funds Transfer Disclosure we gave you for information concerning errors and unauthorized activity covered by the Electronic Funds Transfer Act.

If the suspected Account problem involves a substitute check, you might be able to make a claim for an expedited refund. Please refer to the Substitute Check Policy we gave you for additional information.

We truncate your checks and you understand that we will not return your original checks to you with your statement. You agree that our retention of checks does not change or waive your responsibility to examine your statements or change the time limits to notify us of any errors or unauthorized activity.

## 4.3 Protect Your Account Information

It is important that you protect your Account information to prevent unauthorized transactions and fraud, including email fraud and other internet frauds and schemes. Subject to applicable law, we are not responsible for any losses, injuries, or harm you may incur due to any electronic, email, or internet fraud.

Keep your Account number, debit card, and statements secure at all times, and be careful about who you share this information with. If you have access to Online Banking Services, make sure to also keep your computer or mobile device secure at all times and avoid accessing the Online Banking Services when others can see your screen. We will never contact you by email to ask for or verify Account numbers, access credentials or any sensitive or confidential information.

We are not responsible for any loss or damage you suffer due to the failure of systems and software you use to interface with our system(s) or process banking transactions. You are solely responsible for the adequacy of systems and software you use to interface with our systems or process banking transactions.

If your Account number, debit card, mobile device or Online Banking Services login credentials are lost or stolen, notify us immediately to limit your liability for unauthorized transactions that may occur. Please refer to the Electronic Funds Transfer Disclosure we gave you for information and applicable deadlines for notifying us of losses or theft.

## 4.4 No Illegal Activity, Internet Gambling, and Right to Refuse Transactions

You must not use your Account for any illegal purposes or for unlawful internet gambling transactions. We may deny any transaction or refuse to accept any deposit that we believe is related to illegal activity, unlawful internet gambling or for any other reason at our discretion.

If you are a commercial customer, you certify that you are not now engaged in and, during the life of this Agreement, will not engage in any activity or business that is unlawful under the Unlawful Internet Gambling Enforcement Act of 2006, 31 U.S.C. 5361, *et seq.* (the "UIGEA").

# 5. Binding Arbitration and Class Action Waiver

## 5.1 Overview

Maintaining good relationships with our customers is very important to us. If you have a concern regarding your Account or with a service we provide you, please contact us immediately and we will try to address your concern. However, there may be instances where we are unable to resolve the matter.

All Disputes (as defined below), at the election of you or us, will be resolved by binding arbitration on an individual (non-class, non- representative) basis. For the purposes of this arbitration provision only, "we", "our," and "us" includes Arvest Bank, its employees, officers, directors, parents, controlling persons, subsidiaries, affiliates, predecessors, acquired entities, successors and assigns, and all third parties who are regarded as agents or representatives of ours in connection with a Dispute. (If we assign your account to an unaffiliated third party, then "we" includes that third party.) For the purposes of this arbitration provision only, the term "you" includes each and all depositors on your account, any authorized user on your account(s), any of your agents, beneficiaries, or anyone acting on your behalf or the behalf of your agents or beneficiaries. A Dispute will be arbitrated if either you or us exercise the right to require the Dispute be arbitrated. If, for example, we exercise our right to require the Dispute be resolved by arbitration but you do not also exercise your right to require that the Dispute be arbitrated, the Dispute will be resolved by arbitration.

For the purposes of this arbitration provision, the term "Dispute" means, without limitation, any demand, cause of action, complaint, claim, asserted right, or request for monetary or equitable relief and based upon any legal theory, including contract, tort (including intentional torts), consumer protection law, fraud, agency, statute, regulation, ordinance, or common law, which arises out of or relates to this Agreement or any prior agreement with us, your Account(s), any transaction or activity on your Account(s), any feature or service provided in connection with your Account(s), fees or other charges assessed to your Account(s), any use of our software or services, the events leading up to your becoming an Account holder, our marketing of our products and services, your application, and any other aspect of the relationship between you and us,whether they arose in the past, may currently exist or may arise in the future. "Dispute" also includes any claim, controversy, or dispute arising out of or relating to the "making" (9 U.S.C. § 4), existence, validity, enforcement, of the agreement to arbitrate, or to the arbitrability of any Dispute (including any defenses to arbitrability). As used in this arbitration provision, the term "Dispute" is to be given the broadest possible meaning.

The arbitrator's authority to resolve Disputes is limited to Disputes between you and us alone, and the arbitrator's authority to make awards ordecisions is limited to you and us alone. This arbitration provision does not prevent you or us from taking any Dispute to small claims court if that Dispute is within the jurisdiction of that court. Further, this arbitration provision does not prevent us from interpleading funds, whether involved in a Dispute or not, into court. Any action taken in small claims court by either you or us, or an interpleader action by us does not constitute a waiver of the rights under this agreement to arbitrate and any appeal from a decision of a small claims court or interpleader action is subject to this arbitration provision.

## 5.2 Effect of Arbitration

**Unless you opt-out of arbitration, you waive any constitutional and statutory rights to go to court and have a trial in front of a judge or jury by agreeing to arbitrate. Further, unless you opt-out of arbitration, you agree to waive any right to bring or participate in a class action, private attorney general action, or representative action in court or in arbitration, and neither we nor you will have the right to participate as a representative or member of any class or group of claimants pertaining to any Dispute subject to arbitration.**

Nothing in this arbitration provision limits the right of any party, whether before, during, or after the pendency of

any arbitration proceeding, to exercise any self-help remedies, such as set-off or repossession, or to obtain provisional remedies.

### 5.3 Opt-Out Procedures

**You may opt-out of arbitration by sending us written notice stating that you wish to "Opt-Out of the Arbitration Provision Disputes." You must include your name(s) and Account number(s) in your opt-out notice and send the notice to the following address: Arvest Arbitration Correspondence, P.O. Box 663, Lowell, AR 72745. We must receive this notice within 30 calendar days of the later of either: (1) the date you open your Account or (2) the date this arbitration provision is first made available to you, either in paper or electronic form.**

If this arbitration provision has already been delivered or otherwise made available to you, amendments to this Agreement will not give you a new right to opt out of this arbitration provision unless we amend a substantive clause of this arbitration provision. You may only opt out for your Account.

### 5.4 Severability

If you do not opt-out of this arbitration provision, but a court a competent jurisdiction deems any part(s) of this arbitration provision invalid or unenforceable, then we and you agree that such specific part(s) are of no force or effect, and are severed, but the remainder of this arbitration provision will continue in full force and effect. If, however, a court of competent jurisdiction deems this entire arbitration provision,or your waiver of the right to participate in a class action, private attorney general, or representative action, or to arbitrate injunctive relief claims,invalid or unenforceable, then this arbitration provision has no force or effect for that Dispute.

### 5.5 Conflicts

In the event of a conflict or inconsistency between the provisions of this arbitration provision and either the arbitration administrator's rules or procedures, or any terms of this Agreement, the terms of this arbitration provision control.

### 5.6 Arbitration Proceedings

You or we may elect arbitration by providing written notice to the other. If we elect to arbitrate, we will send you written notice at the postal address reflected on your Account record. If you elect to arbitrate, you must send us written notice to the following address: **Arvest Arbitration Correspondence, PO BOX 663, Lowell, AR 72745**.

A single arbitrator will resolve all Disputes. The parties will select a retired judge who will serve as the single arbitrator. The arbitration will be administered by the AAA under its Commercial Arbitration Rules. If the AAA is unwilling or unable to serve as the arbitration administrator, the arbitration will be administered by (i) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures or (ii) such other administrator as the parties agree to or, in the absence of agreement, (iii) as selected by a court. If the parties cannot agree upon an arbitrator, the arbitration administrator will select a retired judge to serve as an arbitrator. AAA or JAMS may be contacted as follows: American Arbitration Association (120 Broadway, Floor 21, New York, NY 10271, 1-800-778-7879, www.adr.org); JAMS (18881 Von Karman Ave., Suite 350, Irvine, CA 92612, 1-800-352-5267, www.jamsadr.com).

The administrator's rules are posted online. You should read these rules carefully. The parties must maintain the confidential nature of the arbitration proceeding, including the hearing itself, and the award, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, to enforce the arbitration award, or unless otherwise required by applicable law or judicial decision.

### 5.7 Venue: Accounts Opened at Our Branches

Unless determined otherwise by the arbitration administrator, for Accounts opened at our branches, all hearings in the arbitration will take place in the state where the account was opened, which state's laws govern your Account under this Agreement, unless you and we agree otherwise.

### 5.8 Venue: Accounts Opened Online or Over the Telephone

Unless determined otherwise by the arbitration administrator, for Accounts opened online or over the telephone, all hearings in the arbitration will take place in the state of the community you selected at Account opening as nearest to you, which state's laws govern your Account under this Agreement, unless you and we agree otherwise.

### 5.9 Special Hearing

We agree that the arbitrator is authorized, in his or her discretion, to conduct special hearings at any other place for the purpose of receiving evidence that would otherwise be unavailable at the situs of the arbitration and that the place for the special hearing selected by the arbitrator shall also be deemed a place where the arbitrator or "[is] sitting" for purposes of Section 7of the FAA.

### 5.10 Governing Law

This agreement to arbitrate evidences a contract in interstate commerce. The Federal Arbitration Act (9 U.S.C. §§1-16) (the "FAA") governs this arbitration provision. The arbitrator will apply the FAA to all questions arising under the FAA. Subject to and to the extent not preempted by the FAA, the arbitrator will apply the terms of this Agreement, the rules of the administrator, and applicable state law (without reference to its choice of law rules) (in that order of priority) as the rule of decision in arbitration to issues that would be governed by state law if the Dispute were heard in court instead of in arbitration; likewise, the arbitrator will apply federal law to all questions of federal law that arise in arbitration. However, the arbitrator is not bound by rulings in prior arbitrations or court proceedings involving different account holders or users of our services.

### 5.11 Award and Appeal

The arbitrator has the authority to award any relief, including injunctive relief, which is available under applicable law. The arbitrator's award is final and binding on all parties, except as set forth below and any right of appeal provided by the FAA, and judgment on the arbitrator's award may be entered in any state or federal court of competent jurisdiction. At the timely request of eitherparty, the arbitrator will provide a brief written explanation of the grounds for the decision.

### 5.12 Expenses

The arbitration administrator determines the rules and procedures for allocating who pays the arbitration fees, unless limited by applicable law. Please check with the arbitration administrator to determine the fees applicable to any arbitration you initiate. Further, applicable laws may limit the amount of fees and expenses you are required to pay in arbitration. In no event will your arbitration fees and expenses exceed any applicable limits. Unless applicable laws state otherwise, each party will be required to pay for its own attorney, expert, and witness fees. The arbitrator may award any fees, costs, and expenses, including attorneys' fees, as permitted by the administrator's rules.

### 5.13 Severability

This arbitration provision shall survive the closing of your Account, the termination of this Agreement or our relationship with you, and any bankruptcy to the extent consistent with applicable bankruptcy law.

## 6. Other Important Information About Your Account

### 6.1 Governing Law

This Agreement is governed by and construed in accordance with all applicable federal laws and all applicable substantive laws of the State of Oklahoma in which we are located and where you opened your Account. In addition, we are subject to certain federal and state regulations and local clearing house rules governing the subject matter of this Agreement. You understand that we must comply with these laws, regulations, and rules. You agree that if there is any inconsistency between the terms of this Agreement and any applicable law,regulation, or rule, the terms of

this Agreement will prevail to the extent any such law, regulation, or rule may be modified by agreement.

## 6.2 Consumer Reports

You authorize us to request and obtain one or more consumer reports about you from one or more consumer reporting agencies to consider your application for the Account, review or collect on any Account opened for you, or for any other legitimate business purpose.

We may also provide information about you and your Accounts to consumer reporting agencies, such as Chex Systems, Inc. This includes if we close your Account because of unsatisfactory handling of your Account, do not repay Overdrafts or other amounts due on your Account, engage in fraud or illegal activity, or for any other permissible business purpose. The consumer reporting agency may supply this information to others. This may adversely impact your ability to establish an account at any financial institution.

## 6.3 Miscellaneous Provisions

### 6.3.1 Legal Proceedings

If you or your Account become involved in any legal proceedings, we may restrict your use of the Account. We may act on any legal process served upon us which we reasonably believe to be binding, with no liability to you for doing so.

You agree to be liable to us, to the extent permitted by applicable law, for any loss, costs, or expenses that we may incur as a result of any dispute or legal proceeding involving your Account. You authorize us to deduct any such loss, costs, or expenses from your Account without prior notice to you or to bill you separately. These liabilities include disputes between you and us involving your Account and situations where we become involved in disputes between you and an authorized signer, a joint owner, or a third party claiming an interest in your Account. It also includes situations where any action taken on your Account by you, an authorized signer, a joint owner, or a third party causes us to seek the advice of an attorney, whether or not we actually become involved in a dispute. Any action by us for reimbursement from you for any costs or expenses may also be made against your estate, heirs and legal representatives, who are liable for any claims made against and expenses incurred by us.

### 6.3.2 Customer Service

You understand that supervisory personnel may randomly monitor customer service telephone conversations to ensure that you receive accurate, courteous, and fair treatment. If you ask us to follow instructions that we believe might expose us to any claim, liability, or damages, we may refuse to follow your instructions or may require a bond or other protection, including your agreement to indemnify us.

### 6.3.3 Communications About Your Account

You expressly consent to be contacted by us, our agents, affiliates, successors, assignees, service providers, or anyone calling on our behalf, for non-marketing purposes arising out of your use of your Account or Account services, at any telephone number or physical or electronic address you provide to us now or in the future. You agree that we may contact you in any way, including calls or prerecorded or artificial voice messages or text messages delivered by an automatic dialing system, or email messages delivered by an automatic email system.

## 6.4 Notices

We will send you notices to the most recent address shown in our records for your Account. We will send you notices electronically or will make them available to you in the Online Banking Services. We will only send notice to one of you, in the case of joint Account owners.

## 6.5 Closing Your Account

We may close your Account at any time for any reason and without notice to you.

If your Account receives regular government payments by ACH, we will contact you in writing 30 days prior to

closing your Account, unless we close your Account at your request or for fraudulent activity.

For security reasons, we may require you to close your Account and open a new Account if:

- There is a change in the authorized signers;
- There has been a forgery or fraud reported or committed involving your Account;
- Any account checks are lost or stolen;
- You have too many transfers from your Account; or
- You violate any other provision of this Agreement.

If we close your Account, we may send you written notice that your Account is closed on the date we close your Account.

You must notify us of your intention to close your Account, and we reserve the right to request the notice in writing.

If your Account has been closed and we receive a deposit, or we must settle transactions initiated prior to closure under applicable law, card network, or National Automated Clearing House Association rules, you acknowledge and agree that we may reopen your Account in order to post the deposit or settle the transactions. However, we have no obligation to accept such deposits or pay any outstanding checks or other Debit items. You agree to hold us harmless for refusing to accept a deposit or to honor any check drawn on a closed account.

## 6.6 Severability

If a court finds any provision of the Agreement to be invalid or unenforceable, such finding does make the rest of this Agreement invalid or unenforceable. If feasible, any such offending provision is considered modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it will be stricken and all other provisions of this Agreement in all other respects remain valid and enforceable.

## 6.7 Important Information About Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us toidentify you. We may also ask to see your driver's license or other identifying documents.

## 6.8 Our Liability

You agree that if we do not properly complete a transaction according to this Agreement, we are not liable for losses or damages that exceed the amount of the transaction.

You also agree that we are not liable if circumstances beyond our control prevent the transaction, or the funds in your Account are or may be subject to legal process or other claim.

We are not liable for any consequential damages. In receiving items from you for withdrawal or deposit, we act only as your agent. You are responsible for the condition of a check or item when you issue it. If a check or item is returned or payment is delayed as a result of any writing or marking that you or a prior endorser placed on the front or back of the check or item, you are responsible for any cost and liabilities associated with such return or delay.

We reserve the right to refuse any item for deposit or to reverse credit for any deposited items or to charge your Account for items should they become lost in the collection process.

## 6.9 Assignability

You may not assign or transfer this Account without our written consent. We must approve any pledge of the Account. Any such pledge is subject to any right we have under this Agreement and applicable law. We may require you to close the Account and open a new Account in the name of a new transferee or pledgee if you propose changing the ownership of the Account.

## 6.10 Dormant Accounts

If you have not made a withdrawal from, or a deposit to, your Account for an extended period of time, we may classify your Account as dormant. Subject to applicable law, we may charge you a dormant account fee and presume the Account abandoned. In accordance with state law, we will remit funds in abandoned accounts to the custody of the applicable state agency, and we will have no further liability to you for such funds. We reserve the right not to send statements on accounts we consider dormant, subject to applicable law.

## 6.11 Right of Setoff

Subject to applicable law, we may exercise our right of setoff or security interest against any and all of your Accounts (except IRA, Keogh plan and Fiduciary Accounts) without notice, for any liability or debt of any of you, whether joint or individual, whether direct or contingent, whether now or in the future, and whether arising from Overdrafts, endorsements, guarantees, loans, attachments, garnishments, levies, attorneys' fees, or other obligations. If the Account is a joint or multiple-party account, each joint or multiple-party Account owner authorizes us to exercise our right of setoff against any and all Accounts of each Account owner. We may not exercise our right of setoff or security interest if prohibited by the Military Lending Act.

# EXHIBIT 5

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF MISSISSIPPI**
**NORTHERN DIVISION**

MISSISSIPPI BANKERS ASSOCIATION,
409 W. Parkway Pl.,
Ridgeland, MS 39157

CONSUMER BANKERS ASSOCIATION,
1225 New York Ave., NW, Suite 1100
Washington, D.C. 20005

AMERICAN BANKERS ASSOCIATION
1333 New Hampshire Ave. NW,
Washington, DC 20036

AMERICA'S CREDIT UNIONS
4703 Madison Yards Way, Suite 300
Madison, WI 53705

ARVEST BANK
75 North East Street
Fayetteville, AR 72701

BANK OF FRANKLIN
9 Main Street
Meadville, MS 39653

THE COMMERCIAL BANK
P.O. Box 217
175 Hopper Avenue
DeKalb, MS 39328

*Plaintiffs,*

v.

CONSUMER FINANCIAL PROTECTION BUREAU and ROHIT CHOPRA in his official capacity as Director of the CFPB,
1700 G. St. NW, Washington, DC 20552

*Defendants.*

**Civil Action No.:** 3:24-cv-792-CWR-LGI

**DECLARATION OF THE AMERICAN BANKERS ASSOCIATION**

I, Virginia O'Neill, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I submit this Declaration in support of the Complaint and Motion for Preliminary Injunction filed on December 18, 2024, by the Mississippi Bankers Association, the American Bankers Association , the Consumer Bankers Association, America's Credit Unions, Arvest Bank, Bank of Franklin, and The Commercial Bank. I am of the age of majority, and I am competent to make this declaration, which is based on my personal knowledge.

2. I am the Executive Vice President for Regulatory Compliance and Policy at ABA.

3. ABA is the principal national trade association of the financial services industry in the United States. Founded in 1875, ABA is the voice for the nation's $23.9 trillion banking industry, which is composed of small, regional, and large banks that together employ approximately 2.1 million people, and safeguard $18.8 trillion in deposits and extend $12.5 trillion in loans.

4. I have been personally involved in ABA's advocacy regarding efforts by the Consumer Finance Protection Bureau ("CFPB"), pursuant to the Truth in Lending Act ("TILA") and Regulation Z, to deem discretionary overdraft services as "credit" and substantively regulate how they are offered by financial institutions with assets over $10 billion, including the proposed regulations published in the Federal Register on February 23, 2024 (Proposed Rule), and the final regulations approved by the CFPB on December 12, 2024 (Final Rule). I have spoken directly with bankers about the Proposed Rule (which is substantively identical in most respects to the Final Rule), and I have participated regularly in discussions of ABA's overdraft working group, which is comprised of 520 individuals from 340 ABA member banks. ABA's membership includes depository institutions over $10 billion that are currently subject to the Final Rule, as well as banks below $10 billion that have expressed concerns about how the Final

Rule will put them at a competitive disadvantage and harm their customers. ABA members over $10 billion and headquartered in Mississippi have over 300 branches in Mississippi, and ABA members over $10 billion and headquartered outside of Mississippi have over 110 branches in Mississippi. In addition, all ABA members headquartered in Mississippi have over 800 branches in Mississippi, and all ABA members headquartered outside of Mississippi have over 180 branches in Mississippi.

5. Over the years, ABA members have offered innovative features associated with discretionary overdraft services, including reduced fees, real-time low balance alerts, minimum thresholds to trigger an overdraft, grace periods for customers to add funds to their accounts, and limits on the number of overdraft fees that can be charged each day.

6. On April 1, 2024, ABA submitted its comment letter to the CFPB, advising against finalizing the Proposed Rule. ABA emphasized that neither the plain language of the Truth in Lending Act, nor TILA's legislative purpose, supported the rule. In particular, we noted that the Proposed Rule conflicts with the clear text of TILA and its definitions of what constitutes "credit" and what is a "finance charge." ABA also noted that the Proposed Rule is arbitrary and capricious: for example, it would apply to very large banks only, although banks of all sizes offer discretionary overdraft services; and it would set a price cap that would compel banks either to offer discretionary overdraft services at a loss or impose substantial burdens, both financial and administrative, on banks that chose to charge fees over the CFPB's price cap or "breakeven" fee (the bank's calculation of its cost to offer the overdraft service).

7. I have confirmed that Anonymous Member Bank A and Arvest Bank are members of ABA.

8. ABA member banks, of all sizes, typically utilize standard template agreements that describe the terms and conditions of their deposit accounts. I am generally familiar with these templates. They do not give consumers the right to overdraw their accounts or to defer payment of any overdrafts, and they expressly provide that banks may immediately debit consumers' accounts to recoup any overdraft and overdraft fee when funds become available. Consumers have no right to overdraw their account, nor do they have the right to defer repayment of the overdraft amount and associated fee.

9. Nonetheless, the CFPB's Final Rule now requires financial institutions over $10 billion to treat discretionary overdraft services as credit if they charge a fee that exceeds the CFPB's $5 fee cap or a "breakeven" amount reflecting only the pro rata share of its "total direct costs and charge-off losses for providing [discretionary overdraft products] in the previous year . . . ." Overdraft Lending: Very Large Financial Institutions, Docket No. CFPB-2024-0002, at 261 (issued Dec. 12, 2024) (to be codified at 12 C.F.R. § 1026.62(d)(1)(i)). Thus, a large bank can only account for its cost of funds and operational costs that are directly attributable to its discretionary overdraft program. It cannot count general overhead costs (including time spent by branch personnel interacting with customers about discretionary overdraft services) not directly traceable to a specific offering of non-covered overdraft "credit," or charge-off losses due to unauthorized use, electronic funds transfer errors, billing errors, returned deposit items, or rescinded provisional credits. Thus, the CFPB's calculation of a bank's "breakeven" overdraft fee fails to address the actual costs banks will incur in order to offer overdraft protection services to their customers.

10. Financial institutions with assets over $10 billion face a choice: they can offer discretionary overdraft services at a loss (by charging either the CFPB's $5 fee cap or their own breakeven amount, which is not a true breakeven amount), or they can charge a higher fee and

comply with additional substantive requirements that require them to modify their product offerings, limit their fees, and assess the creditworthiness of consumers before charging overdraft fees. That is not a choice TILA requires them to make.

11. The Final Rule has a compliance date of October 1, 2025. Given the imminence of that compliance date and the significant compliance, operational, programming, and training changes necessary to comply with the Final Rule, ABA members over $10 billion must start now if they are to be ready to comply with the Final Rule by its compliance date.

12. Complying with the Final Rule will require banks that decide to offer discretionary overdraft services above their "breakeven" cost to design a separate overdraft "credit" account governed by Regulation Z. This involves reprogramming the bank's deposit systems to route overdraft "credit" into a separate account. Furthermore, to comply with Regulation Z, banks will need to create a variety of disclosures and establish procedures designed to ensure that those disclosures are accurate and provided to consumers in a timely fashion. Banks that permit consumers to link their deposit account to a debit card or other device subject to the CARD Act must conduct ability-to-pay determinations, which will involve obtaining and analyzing their customers' financial information as part of a new underwriting process. This process may involve the creation of databases to upload and collect the necessary documentation and hiring of personnel to perform underwriting. It also requires extensive employee training and establishing new compliance management policies and procedures.

13. Banks that choose to offer discretionary overdraft services at their "breakeven" cost must expend resources determining what that cost is under the CFPB's criteria (which, as discussed, significantly understates the cost of providing discretionary overdraft services). This

requires that banks aggregate and document their "total direct costs and charge-off losses for providing [discretionary overdraft products] in the previous year . . . ." Overdraft Lending: Very Large Financial Institutions, Docket No. CFPB-2024-0002, at 261 (issued Dec. 12, 2024) (to be codified at 12 C.F.R. § 1026.62(d)(1)(i))

14. In addition, banks that charge their "breakeven" cost or the CFPB's $5 fee cap must significantly change their account offerings and business strategy to offset lower overdraft fee revenue. Some banks will have to change the types of accounts they offer and restrict the availability of discretionary overdraft services to certain qualified customers. This includes, for example, eliminating free-checking for some or all customers and/or monthly account servicing fees for low- or negative-balance accounts. Likewise, some banks that have adopted consumer-friendly overdraft policies such as *de minimis* negative balance or transaction amounts or daily overdraft fee limits will be forced to eliminate or scale back those policies. Each of these changes, in turn, require upfront analyses by business and legal personnel, and then considerable implementation work on the back-end, such as making system changes and testing in its operating systems, revising policies and procedures, updating account agreements, issuing new overdraft fee disclosures to existing customers (including the CFPB's model A-9), revising marketing materials, training retail employees in the branch and call centers, and conducting additional compliance management and audit reviews.

15. While banks will be harmed by the administrative and financial costs of the Final Rule, consumers also will be harmed. Consumers who do not meet the bank's ability to repay standard will lose access to discretionary overdraft services and may have to turn to more costly non-bank alternatives, such as pay-day loans or pawn shops, to meet key expenses such as rent, food, gas, and medical care. ABA members have expressed this to me, both informally and in

comment letters submitted to the CFPB. The CFPB has acknowledged that, in principle, the Final Rule could limit access to overdraft services, particularly for lower income individuals and underserved minorities.

16. ABA anticipates the Final rule will continue to cause economic injury unless the Final Rule is preliminarily enjoined. Preliminarily enjoining the Final Rule would prevent ABA's members from incurring more unrecoverable compliance costs, while vacating the Final Rule would redress the economic injury on a more lasting basis.

I declare under penalty of perjury, this 17th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Virginia O'Neill

Virginia O'Neill
American Bankers Association

# EXHIBIT 6

# DECLARATION OF ANONYMOUS CREDIT UNION B

I, Executive Vice President of Anonymous Credit Union B, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently the Executive Vice President of Anonymous Credit Union B. I have been personally involved in efforts to evaluate the new Rulemaking by the Consumer Financial Protection Bureau ("CFPB") titled Overdraft Lending: Very Large Financial Institutions, posted on the CFPB's website on December 12, 2024 (hereinafter "Final Rule"), and its impact on Anonymous Credit Union B. I submit this declaration in support of the Complaint and Motion for Preliminary Injunction filed by the Mississippi Bankers Association, the Consumer Bankers Association, the American Bankers Association, America's Credit Unions, Arvest Bank, Bank of Franklin, and The Commercial Bank. I am of the age of majority, am competent to make this declaration, and make this declaration based on my personal knowledge and investigation.

## I. Anonymous Credit Union B's Services and Discretionary Overdraft Service

2. Anonymous Credit Union B is a member of America's Credit Unions. Anonymous Credit Union B is headquartered in the Fifth Circuit and operates full service branches in the Fifth Circuit. As a not-for-profit financial cooperative (federally-chartered credit union), Anonymous Credit Union B is owned and controlled by its members rather than by shareholders. Excess revenue is returned to Anonymous Credit Union B's members and used to lower the cost of the credit union's products and services or offer new products and services. Anonymous Credit Union B strives to provide a wide range of products and services to its members, including discretionary overdraft services. As detailed below, the Final Rule will have

a dramatic negative effect on Anonymous Credit Union B's ability to continue offering discretionary overdraft services related to its deposit accounts and will cause Anonymous Credit Union B to incur significant non-recoverable compliance costs.

3. Anonymous Credit Union B currently has assets in excess of $10 billion and is classified as a Very Large Financial Institution under the Final Rule.

4. Anonymous Credit Union B offers a wide variety of products and services to its members at affordable prices, including discretionary overdraft services to members with checking accounts. Anonymous Credit Union B allows members to use a debit card in order to more easily make purchases.

5. Anonymous Credit Union B's discretionary overdraft service is provided as a deposit account feature, and while an opt-in election provides the member with access to the discretionary overdraft services on ATM and debit card transactions, the service does not require a separate application by the consumer. Anonymous Credit Union B's membership agreement sets forth the terms governing Anonymous Credit Union B's discretionary overdraft service. As is standard in the industry, the membership agreement grants Anonymous Credit Union B discretion to cover a member's overdraft and does not confer a right upon the member to incur a debt. In addition, under the membership agreement, Anonymous Credit Union B retains the right to recover any unpaid overdraft (and overdraft fee) upon demand, and it is Anonymous Credit Union B's practice to recover unpaid amounts by debiting the member's account when new funds are deposited into the account.

## II. Anonymous Credit Union B's Non-Recoverable Compliance Costs

6. As explained more fully below, the Final Rule will require Anonymous Credit Union B to incur numerous costs in order to meet the Final Rule's fast-approaching October 1,

2025 implementation date. Given the scope of the changes required by the Final Rule, Anonymous Credit Union B must begin its work immediately to meet the implementation date. To meet this deadline, Anonymous Credit Union B will have to first analyze data to determine whether the Final Rule's $5 fee cap will "breakeven" with the costs of offering its discretionary overdraft service. Not including the business interruption and cost to gather the necessary data which we are unable to calculate at this time, this would require dedicated allocation of over 130 hours of internal financial analyst time, representing a cost estimate of $11,000, which could be incurred as early as January 2025.

7. After the financial analysis, Anonymous Credit Union B will further incur upfront costs including: assembling a project management team (consisting of compliance, deposit operations, information technology, training, and legal personnel) to review the Final Rule, analyze Anonymous Credit Union B's options for compliance with it, and oversee the necessary changes. The Final Rule will also necessitate the hiring of multiple third-party consultants to assist Anonymous Credit Union B in implementing the changes necessary to comply with the Final Rule and to review the changes after implementation to validate compliance.

8. Based upon the information currently available to Anonymous Credit Union B, it is most likely that the $5 Fee Cap would require Anonymous Credit Union B to offer discretionary overdraft services at a loss. As a result, Anonymous Credit Union B will most likely be forced to offer "overdraft credit" subject to the newly-imposed Regulation Z requirements and will not be able to continue to offer its discretionary overdraft service at either the $5 fee cap or the so-called "breakeven" cost. Anonymous Credit Union B's initial assessment is that the $5 fee cap will not cover all the costs Anonymous Credit Union B incurs to offer discretionary overdraft service to its customers. The same holds true with respect to the so-

called "breakeven cost," given that when calculating the "breakeven" cost under the Final Rule, financial institutions may only include general overhead costs "directly traceable" and solely related to a specific offering of overdraft services. Thus, for example, costs related to customer inquiries to a call center would not factor into a financial institution's calculation of "breakeven" cost unless the financial institution has a system in place to trace calls related only to provision of discretionary overdraft services. Anonymous Credit Union B does not have that capability.

9. Given that Anonymous Credit Union B currently believes the most likely effect of the Final Rule is to cause it to no longer offer its discretionary overdraft services and force it to offer "overdraft credit" subject to Regulation Z, above the fee cap and breakeven cost, Anonymous Credit Union B focuses in this declaration on the compliance costs associated with developing and creating such a new product in order to comply with the Final Rule.

10. Initially, Anonymous Credit Union B would have to deconstruct its current discretionary overdraft services program, including by removing all products and customizations currently in its core system associated with the overdraft program. Based on recent projects of similar size and scope, Anonymous Credit Union B estimates that this would cost a total of $280,000 while requiring approximately 4 months of allocated internal resources including IT, Operational, and Web Development personnel and contingent workers.

11. After deconstructing its current offerings, to offer an "overdraft credit" product consistent with the Requirements of the Final Rule will require Anonymous Credit Union B to create a brand-new product, requiring not only modifications to operating systems, but also preparation of new policies and procedures, revision of marketing materials, creation of new disclosures, training modules, training of branch and call-center employees, and conducting additional compliance management and audit reviews. This would be both a costly and labor-

intensive process involving significant output from many of Anonymous Credit Union B's current employees (taking them away from their other responsibilities and other prioritized projects) as well as engagement of numerous third-party vendors to help implement the proposed changes. The process of bringing its discretionary overdraft services into compliance with Regulation Z will be particularly onerous for Anonymous Credit Union B, as it involves cooperation of its lending and core deposit operating systems—two completely different systems. The compliance costs stemming from application of Regulation Z to discretionary overdraft services are associated with the following specific changes:

12. Anonymous Credit Union B would need to design two different deposit account services: one service which would not allow members to overdraw their deposit account (which would be governed by Regulations E and DD because it did not provide access to overdraft "credit"), and another service that would allow members to overdraw their deposit account (governed by Regulation Z because it did provide access to overdraft "credit").

13. Anonymous Credit Union B would have to establish a framework, supported by the necessary infrastructure, to conduct ability-to-pay determinations on deposit accounts with overdraft features. This would include, among other things, a process to collect information from members that permits the financial institution to calculate the member's debt-to-income ratio, debt-to-asset ratio, and the member's income after paying their debt obligations.[1] The infrastructure would include databases to upload and collect the necessary documentation, as well as additional personnel to perform the ability-to-pay analysis.

14. Anonymous Credit Union B would have to modify its deposit systems so that, when the member overdraws the account, the overdraft "credit" is placed in a separate credit

[1] 12 C.F.R. § 1026.51(a)(1).

account. This will require reprogramming Anonymous Credit Union B's deposit account operating systems, including modification to its core system and implementing a new overdraft lending system, along with testing and validation.

15. Anonymous Credit Union B would have to comply with Regulation Z's fee requirements, including limitations on first-year fees,[2] finance charges imposed as a result of the loss of a grace period,[3] fees on over-the-limit transactions,[4] and penalty fees.[5] This will require implementation of a new overdraft lending product, annual licensing fees for the new product, as well as require reprogramming Anonymous Credit Union B's current deposit account operating systems and testing to comply with Regulation Z's requirements, including payment due dates and periodic statements.

16. Anonymous Credit Union B would have to determine whether its provision of discretionary overdraft services is further subject to Regulation Z's requirements related to applications, solicitations, and the provision of dispute rights.[6]

17. Anonymous Credit Union B would need to extend its fair lending compliance efforts to cover overdraft "credit."

18. In addition to the costs outlined in paragraphs 10–17, Anonymous Credit Union B would have to incur costs related to the fact that services offered under Regulation Z are subject to the requirements of the Military Lending Act ("MLA"). Specifically, Anonymous Credit

[2] *Id.* § 1026.52(a).

[3] *Id.* § 1026.54.

[4] *Id.* § 1026.56.

[5] *Id.* § 1026.52(b).

[6] *Id.* § 1026.13.

Union B would have to apply MLA provisions (such as the MLA's 36% Military Annual Percentage Rate ("MAPR") for covered credit) to deposit account holders who are covered servicemembers and their dependents in connection with deposit account overdrafts.[7] This could result in an additional loss of revenue for Anonymous Credit Union B. Furthermore, Anonymous Credit Union B would need to establish a process to determine servicemembers' status at the time of account opening and to comply with the MLA's MAPR cap as well as its other provisions. This might require Anonymous Credit Union B to rely on verification services provided by Credit Reporting Agencies, which would be an added expense.

19. Any and all changes mandated by Regulation Z and the MLA would require Anonymous Credit Union B to update its policies and procedures and marketing materials and to train its staff accordingly.

20. Based on Anonymous Credit Union B's evaluation of a third-party lending product option, its prior experiences with implementing changes to its service offerings, and its efforts to estimate the internal cost of implementing a new product of the type outlined above, Anonymous Credit Union B estimates that its costs of making the above-described changes include, at a minimum, the following: (1) a one-time implementation fee for the new lending product of $75,300; (2) cost estimate of allocating internal IT, Web Development, and Operational personnel to implement the new lending product estimated at $1.1 million (this would include dedication of internal personnel to the new lending product for 3-6 months in early 2025, during which these resources would be unable to work on other projects for Anonymous Credit Union B); (3) core system development fees of $60,000; (4) cost estimate of

[7] 10 U.S.C. § 987(b).

allocating Overdraft Department resources to implementing the new products of $160,000; and (5) fees for third-party compliance review after the product is implemented of $34,000.

* * * * *

21. Anonymous Credit Union B anticipates that it will continue to incur non-compensable costs complying with the Final Rule unless the Final Rule is preliminarily enjoined. Preliminarily enjoining the Final Rule would prevent Anonymous Credit Union B from incurring more unrecoverable compliance costs. Vacating the Final Rule would address the economic injury on a more lasting basis and ensure that Anonymous Credit Union B can continue offering discretionary overdraft services to all deposit account members.

22. I declare under penalty of perjury, this 17th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Authorized Signature
AUTHORIZED SIGNATURE FOR
ANONYMOUS CREDIT UNION B

Signed copy maintained by Plaintiffs' counsel

# EXHIBIT 7

# DECLARATION OF AMERICA'S CREDIT UNIONS

I, Jim Nussle, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I submit this Declaration in support of the Complaint and Motion for Preliminary Injunction filed on December 12, 2024 and December 18, 2024, respectively, by the Mississippi Bankers Association, Consumer Bankers Association, American Bankers Association, America's Credit Unions, Arvest Bank, Bank of Franklin, and the Commercial Bank. I am of the age of majority, and I am competent to make this declaration, which is based on my personal knowledge.

2. I am the President and CEO of the Credit Union National Association d/b/a America's Credit Unions.

3. America's Credit Unions represents our nation's nearly 5,000 federally and state chartered credit unions that collectively serve over 140 million consumers with personal and small business financial service products. America's Credit Unions delivers strong advocacy, resources, and services to protect, empower and advance credit unions and the people they serve. We advocate for responsible legislative policies and regulations so credit unions can efficiently meet the needs of their members and communities. America's Credit Unions' members operate in all 50 states, including Mississippi. All 59 credit unions within Mississippi are members of America's Credit Unions.

4. I have been personally involved in America's Credit Unions' advocacy regarding efforts by the Consumer Financial Protection Bureau ("CFPB"), pursuant to the Truth in Lending Act ("TILA") and Regulation Z, to deem discretionary overdraft services as "credit" and substantively regulate how they are offered by financial institutions with assets over $10 billion, including the proposed regulations published in the Federal Register on February 23, 2024

(Proposed Rule), and the final regulations approved by the CFPB on December 12, 2024 (Final Rule). I have spoken directly with many of our member credit unions about the Proposed Rule and the Final Rule, and I have participated regularly in meetings of America's Credit Unions' Board of Directors and am familiar with the work of various internal committees that have discussed the Proposed Rule, including our Advocacy Committee. In these discussions, I have learned about the impacts of the Final Rule on our members, including regarding compliance costs, impacts on customers, and time needed to implement regulatory changes.

5. On April 1, 2024, America's Credit Unions submitted a detailed comment letter to the CFPB advocating against the Proposed Rule. In its letter, America's Credit Unions noted that the Proposed Rule harms financial inclusion, misapplies legal authority, and risks destabilizing credit unions. Specifically, the Proposed Rule misinterpreted TILA by redefining overdraft fees as "finance charges" and overdraft protection as "credit," exceeding the CFPB's statutory authority. America's Credit Unions also argued that the rule is "arbitrary and capricious" under the Administrative Procedure Act due to its unsupported $10 billion asset threshold and circumvention of the Small Business Regulatory Enforcement Fairness Act process. Additionally, America's Credit Unions raised conflicts between the rule and long-standing regulatory precedent as well as the CFPB's lack of Congressional authorization to redefine key statutory terms or set fee caps.

6. Over the last several years, many of America's Credit Unions' members have offered innovative features associated with discretionary overdraft services, such as reduced overdraft fees, real-time low-balance alerts, minimum thresholds to trigger an overdraft fee, grace periods for customers to add funds to their accounts after an overdraft, and limits on the number of overdraft fees that can be charged each day, on top of free-checking products that

have been available for longer. These changes have allowed credit unions to provide a critical form of liquidity with greater protections for consumers, many of whom lack access to traditional forms of credit and use overdraft services to pay critical expenses such as rent, food, gas, and medical care. As outlined above, in its comment letter America's Credit Unions explained how the CFPB's Proposed Rule would actually hurt consumers, as it would restrict access to overdraft liquidity for consumers who lack access to credit.

7. To assess the impact of the Proposed Rule on credit union programs, America's Credit Unions conducted a survey of its membership, the results of which it shared with the CFPB in its comment letter. The survey was conducted from February 13, 2024, to February 29, 2024. America's Credit Unions received 49 responses. Per respondent, an average of 14,000 members used overdraft services in 2023 (though not all respondents provided responses to all questions). In the survey, America's Credit Unions asked credit unions whether the overdraft fee cap would impact their ability to operate overdraft programs. Notably, 62% of participating credit unions answered they would likely charge higher fees for free checking or savings accounts if the Proposed Rule were in effect. Credit unions (40%) noted they would impose more stringent qualifying criteria to open free checking or savings accounts with overdraft options, which inherently discourages members from applying for such overdraft services. In response to questions asking how the Proposed Rule would impact the credit union's financial literacy (59%), community grants and scholarship programs (70%), and emergency loan programs (55%), most credit unions acknowledged that those programs would be scaled down. Credit unions acknowledged they would eliminate various essential programs altogether, due to the CFPB's proposed overdraft fee cap rule. For exempted institutions, 71% would be forced to reduce their fee to remain competitive and 11 percent would be forced to remove their overdraft

protection program entirely. Survey respondents indicated that, if implemented, the Proposed Rule would dramatically reduce the overdraft income credit unions need to fund programs which are crucial to growth and sustainability of the financial needs of their membership.

8. In its comment letter, America's Credit Union also encouraged the CFPB to conduct a comprehensive market impact study to better understand how the Proposed Rule would affect exempt financial institutions and their members' access to credit.

9. The CFPB has recognized the possibility that the Final Rule would cause banks to restrict the provision of discretionary overdraft services. *See* Final Rule at 221. It has acknowledged that such actions would hurt consumers and that frequent overdrafters "tend to have lower incomes and lower end-of-day balances"; are "less likely to have access to alternative credit options"; "have lower credit scores, are less likely to have a general purpose credit card, and, if they do have such a card, they have less credit available on it"; and that "Black households and Latino households are more likely to incur overdraft fees than white households." *Id.* at 21–22. America's Credit Unions' own survey results bear this out. Eliminating or substantially limiting overdraft services for a significant segment of credit unions' consumer bases will have the harmful effect of pushing consumers without access to credit into the arms of predatory lenders instead of regulated banking alternatives like discretionary overdraft services.

10. The rule, despite its asset threshold, would, as a result of competitive market pressures, nonetheless impact exempt institutions in much the same way as covered institutions. But with the thinner margins of smaller institutions, the rule would lead to a greater reduction in overdraft protection services. This would have seriously detrimental impacts on credit unions and their members, including reduced ability to serve underserved areas, reduced relationship

banking as well as removing the stepping-stone to financial inclusion that overdraft protection often represents for many Americans.

11. Nonetheless, it is my understanding that under the CFPB's Final Rule, financial institutions over $10 billion must treat discretionary overdraft services as credit if they charge a fee that exceeds the CFPB's $5 "benchmark fee" or a "breakeven" amount reflecting the pro rata share of a financial institution's "total direct costs and charge-off losses for providing [discretionary overdraft services] in the previous year." Final Rule at 124. According to member credit unions I have spoken with, being forced to charge the benchmark fee or breakeven cost under the Final Rule would require covered credit unions to remove crucial services, tighten eligibility standards and remove access to overdraft for those who need it most, and would cause some financial institutions to remove overdraft protection altogether.

12. Based on our member's concerns, the CFPB's Final Rule leaves covered institutions in a precarious position with four undesirable options: 1) apply TILA and CARD Act provisions to overdraft; 2) offer overdraft services at a breakeven cost determined by the financial institution annually; 3) offer overdraft services at the benchmark set by the CFPB; or 4) to discontinue the overdraft program altogether. Each of these scenarios present significant negative implications for consumers and financial institutions, exacerbating the very issues the CFPB aims to mitigate.

13. The Final Rule is effective on October 1, 2025. Given the proximity of that compliance date and the complicated nature of the changes, an extended implementation period for affected financial institutions is necessary. A minimum of 18-24 months post-publication of the final rule would provide a more realistic timeframe for credit unions to undertake the comprehensive changes required.

14. Covered credit unions that choose to comply with the Final Rule by offering above "breakeven" overdraft "credit" will incur significant expenses. These expenses include reprogramming the credit union's deposit systems to route overdraft "credit" into a separate account, updating policies, procedures, and marketing materials, and creating disclosures that then must be provided to customers in a timely fashion. Credit unions that permit customers to link their deposit account to a debit card or other card subject to the CARD Act must conduct ability-to-pay determinations, which involves collecting and analyzing their customers' financial information as part of a new underwriting process. This process would require creation of databases and hiring of additional underwriting personnel. Members will also need to assess how the Final Rule's characterization of discretionary overdraft services as "credit" implicates other statutes governing credit unions, and potentially design the new credit product consistent with the requirements in those statutes, including, for example, the usury limitations in the Federal Credit Union Act and Military Lending Act.

15. Under the Final Rule, if America's Credit Unions' members choose to offer discretionary overdraft services at their "breakeven" cost, they must expend resources determining what that cost is under the CFPB's criteria (which, as discussed, significantly understates the cost of providing discretionary overdraft services). America's Credit Unions is concerned about the feasibility of calculating the total direct costs and charge-off losses over the previous 12 months, as mandated, particularly for institutions that may not have comprehensive data for this period. This requirement could pose significant challenges for entities without the capability to track the specifically traceable overdraft costs and charge-off losses for a full year or those that would, as a result of the rule, be required to implement these capabilities for the first time. This would come at a considerable expense. Without further clarity or this flexibility, many

institutions would be compelled to adopt the benchmark cost provided, potentially leading to a scenario where they are disadvantaged by not being able to use a more accurate, potentially higher breakeven cost reflective of their true operational expenses. Even for those credit unions that do have the resources to calculate their breakeven cost, this process could take many months beyond the current effective date of the rule.

16. In addition, America's Credit Unions' members have concerns that if they charge their "breakeven" cost or the CFPB's $5 "benchmark" fee, offering overdraft services at the breakeven or benchmark cost would inevitably lead to a tightening of eligibility criteria as financial institutions seek to mitigate risk without the corresponding revenue to offset it. This change would excessively affect those consumers who rely on overdraft programs as a financial safety net, leaving them without an essential service in times of need. The irony here is noticeable: a rule intended to protect consumers from fees could very well restrict access to a crucial financial tool, particularly for those living paycheck to paycheck or those without alternative credit options. Conversely, if institutions choose to remove overdraft services entirely, the repercussions extend beyond just those who frequently incur overdrafts. All members of a financial institution stand to lose a valuable service that provides flexibility and peace of mind in managing their finances. The removal of overdraft services could lead to increased instances of declined transactions, causing not only inconvenience and distress, but also a potential cascade of financial harm for consumers. Moreover, the absence of overdraft protection would likely lead to a rise in alternative, and potentially more costly, forms of short-term credit, pushing consumers towards payday lenders and other high-cost credit providers that may engage in predatory practices.

17. The survey conducted by America's Credit Unions found that estimated total overdraft revenue would significantly decline (median percentage) during the previous 12 months if the affected credit union were to adopt the benchmark fees: at $3 per overdraft (-90%), and at $6 per overdraft charge (-79%). The survey also found that the average minimum fee that a credit union could charge for an overdraft, without operating the program at a loss, was $12 and the median fee was $10.

18. I have confirmed that Anonymous Credit Union B is a member of America's Credit Unions.

19. I declare under penalty of perjury, this 18th day of December, 2024, based on my personal knowledge and investigation, that the foregoing is true and correct to the best of my knowledge, information and belief.

Jim Nussle
America's Credit Unions