



December 20, 2024

Re: Repeal CFPB's Midnight Rules Dear

Member of Congress:

We, the undersigned organizations and individuals, urge you to address the Consumer Financial Protection Bureau's (CFPB) last-minute efforts to expand its own regulatory authority to govern digital wallets and overdraft fees. On November 21, 2024, the CFPB issued a [final rule](#) granting itself supervisory authority over companies facilitating consumer payments through peer-to-peer platforms and digital wallets, and issued a [final rule](#) effectively imposing price controls on overdraft fees on December 12. **We urge you to introduce joint resolutions of disapproval repealing both rules under the *Congressional Review Act* between January and April 2025.**

Over the past four years, the CFPB has frequently acted beyond its intended scope, often bludgeoning financial institutions for engaging in activity that is at odds with the White House's preferred policies. Now, the CFPB has finalized midnight rules to extend its oversight authority over technology firms operating digital wallets and payment applications, abuses of power that raise significant legal and economic concerns.

By its own admission, the CFPB does not understand the disruptive economic impacts it could impose on peer-to-peer payments, digital wallets, and other payment applications because it failed to conduct a substantive cost-benefit analysis before issuing its rule. The CFPB's own record in this rulemaking [admits](#) that "limited data are available with which to quantify the potential benefits, costs, and impacts of the proposed rule."

As a result of the CFPB's lack of due diligence, the impact of the agency's regulatory overreach will not be quantified until innovation and competition within the digital payment application sector has been irreparably harmed. For everyday consumers, this will inevitably bring higher costs and reduced choice within American digital markets.

Additionally, because state authorities already supervise money transmission, the CFPB's final rule needlessly duplicates oversight within a secure financial sector. As the CFPB has itself [acknowledged](#), many digital payment applications are already "required to report certain transaction data to State regulators," invalidating the need for an additional layer of federal policing.

According to one [law review article](#), “[s]tate enforcers are also likely to have a better understanding of local conditions than their federal counterparts, simply by virtue of working and living in the state rather than Washington, D.C.” The CFPB’s final rule is a misguided encroachment into state regulatory **jurisdiction**.

The CFPB has also arbitrarily capped overdraft fees at \$5 for most large banks. The CFPB’s basis for proposing the rule lacks merit. No sound reasoning is given for why the CFPB has chosen to pursue this rule besides claiming to uphold consumer rights. The CFPB cannot be allowed to formulate rules out of thin air. The CFPB’s proposed rule will undoubtedly create unwanted market distortions and potentially coerce financial institutions to adhere to benchmark fees arbitrarily set by the CFPB—essentially imposing price controls.

This price control on overdrafts also overlooks the intrinsic differences between traditional credit products and overdraft services. Overdrafts are fundamentally distinct from planned borrowing; they are contingent, often unplanned services that act as a safety net for consumers on the financial institution’s behalf. This distinction is crucial for understanding the consumer behavior and risk profiles associated with overdraft services.

Preserving state regulatory authority, safeguarding digital innovation, and ensuring accountability for the administrative state are essential for fostering a competitive financial ecosystem. **For these reasons, we urge you to take the opportunity between January and April of 2025 to nullify these harmful CFPB final rules through joint resolutions of disapproval under the *Congressional Review Act*.**

We appreciate the opportunity to discuss our strong concerns with the CFPB and are happy to be a resource to you as policy priorities come together for the 119th Congress.

Sincerely,



Grover Norquist
President
Americans for Tax Reform



James Erwin
Executive Director
Digital Liberty



Tom Hebert
Executive Director
Open Competition Center



Seton Motley
ExecPresident
Less Government



Steve Pociask
President and CEO
American Consumer Institute



Phil Kerpen
President
American Commitment



Chuck Muth
President
Citizens Outreach



David Williams
President
Taxpayer Protection Alliance



Yaël Ossowski
Deputy Director
Consumer Choice Center



Karen Kerrigan
President & CEO
Small Business & Entrepreneurship Council



Jeffrey Mazzella
President
 Center for Individual
 Freedom



James L. Martin
Founder/Chairman
 60 Plus Association



Brandon Arnold
Executive Vice President
 National Taxpayers Union



Daniel J. Erspamer
Chief Executive Officer
 Pelican Institute for Public
 Policy



Sam “Saul” Anuzis
President
 American Association of
 Senior Citizens



James Taylor
President
 The Heartland Institute



Cameron Sholty
Executive Director
 Heartland Impact



John Berlau
Director of Finance
 Policy
 Competitive Enterprise
 Institute

Seth C. Oranburg, Esq.

Associate Professor

Franklin Pierce School of Law at the University of New
 Hampshire

Co-Director

Program on Organizations, Business, and Markets at the
 Classical Liberal Institute at NYU School of Law