



**Innovative Payments Association**

110 Chestnut Ridge Rd, Suite 111

Montvale, NJ 07645

[btate@ipa.org](mailto:btate@ipa.org)

March 21, 2024

**Submitted via E-Mail at:** [2024-NPRM-NSF@cfpb.gov](mailto:2024-NPRM-NSF@cfpb.gov)

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

Re: NPRM Fees for Instantaneously Declined Transactions  
[Docket No. CFPB-2024-0003]

To whom it may concern:

This letter is submitted to the Consumer Financial Protection Bureau (the "**CFPB**") on behalf of the Innovative Payments Association ("**IPA**"),<sup>1</sup> in response to the Notice of Proposed Rulemaking on Fees for Instantaneously Declined Transactions issued by the CFPB on January 24, 2024 and published in the Federal Register on January 31, 2024 (the "**Proposed Rule**").<sup>2</sup> The Proposed Rule would prohibit financial institutions from charging consumers insufficient funds ("**NSF**") fees on transactions that are instantaneously, or nearly instantaneously, declined. The Proposed Rule distinguishes between those scenarios where a decision to decline a transaction is not instantaneous (e.g., in connection with the decline of an ACH or check transaction), from scenarios where a decision to decline a transaction is made at an ATM or the point of sale and therefore occurs more or less instantly. It is these latter transactions that concern the CFPB. While the agency acknowledges that very few financial institutions currently assess such an NSF fee for declined transactions at an ATM or the point of sale, the CFPB nevertheless believes action is warranted to ban such fees. To accomplish this, the Proposed Rule relies on the CFPB's authority to issue rules to prevent abusive acts or practices under the Consumer Financial Protection Act. Once finalized, the rule would have a **30-day implementation period**.

While we understand the CFPB's desire to protect consumers from what the CFPB believes would be an abusive act or practice, based on feedback from our members and the CFPB's own research as summarized in the Proposed Rule, the fact is that conduct sought to be prohibited by the CFPB is largely hypothetical. Our members are thus concerned that a full prohibition on instantaneous NSF fees is simply not needed or warranted at this time and fails to take into account scenarios where the assessment of such a fee is done as a means to recoup an actual cost to an issuer in making services available to its customers.

---

<sup>1</sup> The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

<sup>2</sup> 89 Fed. Reg. 6031 (Jan. 31, 2024).



**Innovative Payments Association**

110 Chestnut Ridge Rd, Suite 111

Montvale, NJ 07645

[btate@ipa.org](mailto:btate@ipa.org)

Moreover, to the extent the Proposed Rule is finalized, our members are also concerned that the 30-day implementation period is not sufficient to implement the changes needed to comply with the rule.

First, with respect to the purpose and need for such a rule, as the CFPB itself notes in the proposal, very few providers assess an NSF fee for declined transactions at ATMs or the point of sale today. Based on feedback from our members, the few that do charge a fee in connection with such a transaction only do so with respect to declined transactions at third-party ATMs, where the ATM provider assesses a fee to the account issuer in connection with the declined transaction. In those instances the issuer may pass-through all or a portion of that fee to the accountholder. In all cases that we are aware of, the amount of such a fee is nominal and tailored to the actual cost incurred by the issuer from the ATM operating. In any event, the fee is far less than the \$32 median NSF fee cited by the CFPB. Moreover, while the Proposed Rule includes a lengthy discussion of what appropriately constitutes an "abusive" act or practice under the Consumer Financial Protection Act,<sup>3</sup> that very discussion underscores two important additional points with respect to NSF fees sought to be prohibited under the Proposed Rule. First, that such fees are, as required by law, disclosed to accountholders by the issuer in clear and readily understandable terms,<sup>4</sup> and second, that incurring such a fee is in most instances within the control of the accountholder, who has the ability to check their account balance prior to engaging any such transaction and thereby avoid the fee.

With the foregoing in mind, our members do not believe the Proposed Rule's prohibition on instantaneous, or near instantaneous, NSF fees is necessary or advisable where (i) such fees are generally not assessed to accountholders today, (ii) in those rare instances where such fees are assessed they are done so at a nominal amount to recoup a real cost incurred by the issuer for the convenience of providing account access at a third party ATM; and (iii) where such fees and the conditions under which they may be imposed are clearly and conspicuously disclosed to accountholders and accountholders have means to avoid incurring such a fee.

Second, were the CFPB to move forward with its Proposed Rule, our members note that the proposed 30-day implementation period does not give those few providers that may charge an NSF fee for these types of transactions sufficient time to implement the changes needed to comply with the rule's requirements and the provider's other obligations under applicable law. Among other things, the Proposed Rule may implicate fee change disclosures under Regulation E and, in the case of prepaid accounts, trigger an issuer's obligation to reassess fees listed on the provider's short form disclosure under Regulation E Section 1005.18(b)(2)(ix)(E)(3). Further, the changes necessitated by the Proposed Rule will require corrected disclosures to be in market at the time the change goes into effect, which will require significant additional time to implement. For these reasons, our members urge the CFPB to adopt an implementation period of at least 12 months from the date of the final rule.

The IPA appreciates your consideration of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact me at: [btate@ipa.org](mailto:btate@ipa.org).

---

<sup>3</sup> We note that our members do not agree with the Proposed Rule's interpretation of the UDAAP standards and, in particular, the applicability of the abusiveness prong. For this reason, we caution the CFPB against carrying over its interpretation of the abusiveness standard to any future rulemakings. 89 Fed. Reg. 6039-6040.

<sup>4</sup> 12 CFR § 1005.4.



**Innovative Payments Association**

110 Chestnut Ridge Rd, Suite 111

Montvale, NJ 07645

[btate@ipa.org](mailto:btate@ipa.org)

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Tate', is written over a faint, light-colored signature line.

Brian Tate  
President and CEO  
IPA

[btate@ipa.org](mailto:btate@ipa.org)

6314755.1