September 27, 2017

Director Richard Cordray
Consumer Financial Protection Bureau
1625 Eye St. N.W.
Washington, D.C. 20006

Dear Director Cordray:

We are writing to applaud the Consumer Financial Protection Bureau for convening the Community Bank Advisory Council to discuss the critical topic of overdraft fees – a national epidemic where banks rack up billions of dollars in profits each year on the backs of some of their poorest and most vulnerable customers. Overdraft fees, quite simply, keep citizens in communities throughout our country from being able to climb the ladder of opportunity towards success; the CFPB's recent study found that 79% of all overdraft and non-sufficient funds fees are paid by 9% of customers whose accounts are frequently overdrawn.[1] We are hopeful that the CBAC will recommend real and lasting solutions that address this problem head-on—solutions that go well beyond disclosure and address the size and number of overdraft fees institutions mount on their customers.

In recent years, America's largest banks have seen income from overdraft fees increase substantially. Overdraft income from our country's three biggest banks alone rose to over $6.4 billion in 2016.[2] Wells Fargo, in particular, saw a substantial increase of 16 percent – the largest of any bank, according to FDIC data on 600 financial institutions. A letter earlier this year from members of the U.S. Senate Banking Committee noted that Wells Fargo's overdraft fee income grew at five times the average rate of JP Morgan Chase, Bank of America, TD Bank, and U.S. Bank and coincided in time with Wells Fargo's $185 million settlement for the fraudulent accounts that arose from the bank's "aggressive sales tactics."[3]

Not surprisingly, chasing profits through overdraft fees – regardless of the impact on consumers – has led to a culture of fraud and unscrupulous practices in our country's banks. Bank of America, Wells Fargo, JPMorgan Chase, and others were all taken to court by their customers for the practice of reordering transactions in order to maximize revenue and profits from overdraft fees. The eventual resolutions of some of these suits were substantial; for example, $410 million for Bank of America and $110 million for JPMorgan Chase.

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[1] Consumer Financial Protection Bureau, "Data Point: Frequent Overdrafters," page 5. http://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf

[2] Heather Long, "Big banks rack up $6.4 billion in ATM and overdraft fees," *CNN Money*, February 22, 2017. http://money.cnn.com/2017/02/22/investing/atm-overdraft-fees-rise/index.html

[3] Senators Warren, Brown, et al., "Banking Committee Democrats Question Surge in Wells Fargo's Overdraft Income," (January 11, 2017). https://www.warren.senate.gov/?p=press_release&id=1406

Yet not every bank has made amends to its customers. Even as Wells Fargo publicly professes reconciliation and reform in the wake of numerous scandals, the bank argued to the 11th Circuit Court of Appeals last month that customers affected by its deceptive overdraft practices should be forced into a biased arbitration process – where the average consumer is ordered to pay their bank or lender $7,725, according to the Economic Policy Institute.[4] A California judge found Wells Fargo's practices "unfair and fraudulent,"[5] but the bank has repeatedly[6] tried to block courts from ordering relief to consumers in the other 49 states that could total over $1 billion.[7]

Wells Fargo continues to make similar arguments in an attempt to dismiss class action lawsuits stemming from its fraudulent account scandal, even in the case of a consumer who never signed any contract with the bank.[8] Wells Fargo's continued attempts to avoid accountability for these fake accounts, as well as its abusive overdraft practices, highlight the need for protections like the CFPB's recent arbitration rule, which gives consumers the tools to defend their own interests by restoring our right to join together in court. We commend you for empowering consumers to exercise their rights, which ultimately makes our financial system stronger and safer.

Consumers will continue to look to the CFPB to stand up for their interests. As your studies continue to mount evidence of the harms overdraft fees cause in the lives of Americans, we urge you to take strong substantive action to end unfair and abusive overdraft practices.

Sincerely,

Americans for Financial Reform
Center for Responsible Lending
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
Public Citizen

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[4] Heidi Shierholz, "Correcting the record: consumers fare better under class actions than arbitration," *Economic Policy Institute*, August 1, 2017.
[5] Gutierrez, Walker, Smith, et al. v. Wells Fargo Bank, N.A., No. C 07-05923 WHA
[6] Shayna Posses, "Wells Fargo Loses Arbitration Bids In Overdraft MDL Suits," *Law360*, October 17, 2016. https://www.law360.com/articles/852401/wells-fargo-loses-arbitration-bids-in-overdraft-mdl-suits
[7] Kate Berry, "Wells is last big bank standing in overdraft litigation," *American Banker,* June 26, 2017. https://www.americanbanker.com/news/wells-is-last-big-bank-standing-in-overdraft-litigation
[8] Chris Arnold, "The Scandal That Envelops Wells Fargo Keeps Growing," *NPR*, September 29, 2016. http://www.npr.org/2016/09/29/495882724/the-scandal-that-envelops-wells-fargo-keeps-growing