

July 1, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Submitted electronically to <http://www.regulations.gov>

Re: Overdraft rule review pursuant to the Regulatory Flexibility Act, Docket No. CFPB-2019-0023

Dear Director Kraninger:

The 24 undersigned community, consumer, civil rights, and faith groups write regarding the Consumer Financial Protection Bureau (CFPB or the Bureau)'s review of the 2009 Regulation E overdraft opt-in rule under the Regulatory Flexibility Act (RFA). Weakening the opt-in rule in any way is clearly unsupportable; rather, protections against unfair and abusive overdraft fees should be substantially strengthened.

Today's overdraft fee practices undermine trust in this nation's banking system, permitting banks to thrive by shattering the financial lives of their most vulnerable customers. Financial institutions assess overdraft fees when they choose to pay a customer's transaction even when the customer's account lacks sufficient funds. Historically, banks sometimes covered a customer's paper checks as an occasional courtesy. But this courtesy has long since evolved into a fully automated, fee-generating scheme that costs Americans approximately \$15 billion annually.

Overdraft fees are unreasonable in virtually every respect, and they inflict severe and often irreversible harm on account holders most struggling to stay afloat. Customers often find themselves trapped beneath a snowball of fees triggered by a single overdraft incident. The average fee of \$35 per transaction is grossly out of proportion with most overdrafts, far exceeding the size of the typical debit card overdraft itself. Further, banks typically charge several or more fees per day. Many compound the damage by using transaction posting methods that maximize fees and charging "extended" or "sustained" fees if the consumer is unable to deposit enough money to cover the bank-assessed fees and associated overdrafts.

Hundreds of dollars in fees, for many middle-to-lower income customers, cause a profound economic setback. Overdrafts are the leading reason consumers lose their bank accounts. This is particularly concerning for communities of color, who are already far more likely to be unbanked. Once individuals become unbanked, re-entry is difficult due to account screening blacklists, and these consumers are more likely to use expensive alternative financial services and have fewer mechanisms for saving. The Bureau's research found that nearly 80% of overdraft fees are borne by those carrying an average account balance of only \$350.

The Federal Reserve's 2009 "opt-in" rule was enacted in response to significant evidence that consumers did not want to be charged overdraft fees on debit card transactions and would have preferred to skip a transaction than be charged the fee. This rule was the bare minimum regulators could do to address overdraft abuses—it does not address the high cost of the fees or other concerns.

The opt-in rule has saved consumers billions of dollars, and there is absolutely no reason to weaken it. Instead, protections should be strengthened, because banks have aggressively and often misleadingly collected “opt-ins” and hammer many “opted-in” customers with relentless fees. Further, more should be done to rein in abusive overdraft practices on banking accounts.

Today, despite the opt-in rule, we continue to have a profoundly dysfunctional checking account market. Overdraft fees are the worst kind of fee from a competitive standpoint, undermining consumer choice, a healthy competitive market, and technological progress. It is difficult for consumers to choose an account based on price when the account’s true costs are packed into back-end “gotcha” fees. Thus, they may choose an account that appears “free” —with no upfront monthly fee—but be unaware that they will pay more for the account due to overdraft charges than they would have for an account that has a modest monthly fee but more responsible overdraft fee practices.

Comprehensive sound regulatory policy around overdraft fees—rules that prohibit unfair and abusive practices in overdraft programs—can restore health to the market, make space for far better products, and save families from being washed away by the very institutions that hold themselves out as vehicles for those families’ financial security.

A review of the opt-in rule under the RFA makes plain that protections around overdraft fees on debit card purchases and ATM withdrawals must be strengthened. The problems in the market clearly persist, and the continued rise in debit card transactions places consumers at greater risk of overdrawing. Moreover, it is clear that the opt-in rule should not be weakened for smaller institutions. A weaker opt-in rule for smaller banks would cause harm, confusion, and anger for consumers in the marketplace, and harm small institutions themselves, as they would become known as less safe places to bank.

In particular, we urge the Bureau to:

- Prohibit overdraft fees on debit card purchases and ATM withdrawals;
- Short of a full prohibition, at the very least, apply the protections now applicable to overdraft fees on prepaid cards to debit cards on checking accounts, which in this context should:
 - Prohibit obtaining opt-ins until 30 days after account opening;
 - Require an ability-to-repay determination for overdraft credit extended;
 - Limit fees in the first year to 25% of the credit line;
 - Allow payments to be due no more frequently than once a month, 21 days after a statement.
- Prohibit practices that increase overdraft fees, including posting transactions in order from highest to lowest and charging fees on transactions that were authorized against available funds.
- If the opt-in rule is generally retained as is:
 - provide that consent expire after six total overdraft fees in a rolling twelve months; and
 - allow financial institutions no additional discretion in opt-in disclosures, and prevent misleading marketing or approaches to obtaining opt-ins.
- Require that fees be reasonable and proportional to the cost to the institution of covering the overdraft.

Moreover, comprehensive reform of all overdraft fees is needed. In addition to the above, we urge CFPB to subject overdrafts on all transactions to credit protections, including permitting repayment in

affordable installments. This is particularly warranted for overdraft fees that exceed those that may be occasional and inadvertent—fees exceeding more than one per month and six per year.

We appreciate your consideration of our concerns.

Sincerely,

Allied Progress
Americans for Financial Reform Education Fund
Atlanta Legal Aid Society, Inc.
California Reinvestment Coalition
Center for Economic Integrity
Center for Responsible Lending
Consumer Action
Consumer Advocacy and Protection Society (CAPS)
Consumer Federation of America
Empire Justice Center
Legal Services of New Jersey
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
Public Citizen
Public Counsel
Public Good Law Center
Public Justice Center
Reinvestment Partners
The Consumer Assistance Council, Inc.
Tzedek DC
U. S. Public Interest Research Group
William E. Morris Institute for Justice
Woodstock Institute