



July 1, 2019

Consumer Financial Protection Bureau
1700 G Street NW,
Washington, DC 20552
Via: <http://www.regulations.gov>

Comments in Response to Overdraft Rule Review Pursuant to the Regulatory Flexibility Act, Docket No. CFPB-2019-0023

The National Association of Consumer Advocates (NACA) respectfully submits comments in response to the Consumer Financial Protection Bureau's (CFPB or bureau) review of the 2009 Overdraft Rule under the Regulatory Flexibility Act. We urge the bureau to retain the overdraft "opt-in" rule and strengthen protections against overdraft fees. NACA is a national nonprofit association actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

Under the current overdraft "opt-in" rule, financial institutions must obtain a consumer's consent in advance before charging overdraft fees on most debit card transactions and ATM withdrawals. These fees cause tremendous harm to banks' and credit unions' most financially vulnerable customers.

According to the CFPB's 2017 study, consumers who frequently attempt to overdraw their checking accounts typically pay almost \$450 more in fees if they opted in to debit card and ATM overdraft coverage.¹ The 2009 opt-in rule was a minimum protection afforded by the Federal Reserve in response to widespread consumer outcry from the surprise high, disproportionate overdraft fees on debit card and ATM transactions. Still, the rule has saved consumers billions of dollars. There is no justification for weakening it.

At the same time, consumers deserve more protections from overdraft fee abuses. Consumers continue to pay \$15 billion annually in overdraft-related fees. CFPB's own research makes clear that these are borne primarily by lower income consumers. The fees drive consumers out of banking accounts and exacerbate financial distress. Any economic impact the opt-in rule has on smaller financial institutions is dwarfed by the impact these

¹ Consumer Financial Protection Bureau (CFPB), *Data Point: Frequent Overdrafters*, August 2017, https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf. Also, *CFPB Unveils Prototypes of "Know Before You Owe" Overdraft Disclosure Designed to Make Costs and Risks Easier to Understand*, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-unveils-prototypes-know-you-owe-overdraft-disclosure-designed-make-costs-and-risks-easier-understand/>

punitive fees have on those least able to bear them. Special treatment for small institutions under this rule would make them less safe places to bank.

Comprehensive sound regulatory policy around overdraft fees is needed. In particular, we urge the bureau to prohibit overdraft fees on debit card purchases and ATM withdrawals, which banks can easily decline without charging a fee. At a minimum, the meaningful protections now applicable to overdraft fees on prepaid cards should apply to debit cards on checking accounts. We also urge CFPB to prohibit practices that increase overdraft fees, including posting transactions in order from highest to lowest.

If the opt-in rule is generally retained as is, we urge that CFPB provide that consent expire after six total overdraft fees in a rolling twelve months. The bureau should prevent misleading marketing or approaches to obtaining opt-ins.

We also urge the CFPB to require that fees be reasonable and proportional to the cost to the institution of covering the overdraft.

CFPB should subject overdrafts on all transactions to credit protections, particularly for overdraft fees that exceed those that may be occasional and inadvertent—fees exceeding more than one per month and six per year.

Thank you for considering our comments.

Sincerely,

National Association of Consumer Advocates