June 28, 2019

Consumer Financial Protection Bureau
Comment Intake
1700 G Street NW
Washington, DC 20552

Re: Overdraft Rule Review Pursuant to the Regulatory Flexibility Act, Docket No. CFPB-2019-0023

Consumer Reports appreciates this opportunity to comment on the Consumer Financial Protection Bureau's (Bureau) review of Section 17 of 12 CFR Part 1005, known as the "overdraft rule," in accordance with the Regulatory Flexibility Act. This rule was designed to protect consumers from abusive overdraft practices by requiring banks to obtain affirmative consent (opt-in) from consumers before enrolling them in overdraft programs for ATM transfers and one-time debit card transactions.

In order to fulfill its responsibility to protect consumers, the CFPB should retain the protections included in this rule and focus attention on strengthening protections for consumers against overdraft. The Bureau's own research has repeatedly found that the overdraft rule saves consumers money. It further finds that, despite this rule being in place, consumers continue to pay far too high a cost for "overdraft 'advances'," noting that "overdraft fees can be an expensive way to manage a checking account." Some banks have taken steps to mitigate the consumer harms from overdraft, but only rules that apply to all bank accounts can ensure all consumers are protected.

Overdraft Fees are a Significant Consumer Issue

Overdraft services are effectively short-term lending programs with extremely high interest rates, as banks provide short-term liquidity for overdrawn transactions in exchange for a fee.[1] The

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[1] In 2014, the Bureau found that "in the case of debit card transactions, the median amount that leads to an overdraft fee is $24 and the median amount of a transaction that leads to an overdraft fee for all types of debits is $50. Most consumers who overdraft bring their accounts positive quickly, with more than half becoming positive within three days and 76 percent within one week." Overdraft fees are typically a flat fee rarely charged in relation to the amount overdrawn, and the average fee is $35. Consumer Financial Protection Bureau, *CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges* 1 (2014) available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/

Bureau has stated that “put in lending terms, if a consumer borrowed $24 for three days and paid the median overdraft fee of $34, such a loan would carry a 17,000 percent annual percentage rate (APR).”[2] Without the overdraft rule, consumers could be automatically and unwittingly enrolled in such programs. As research shows, a large majority of consumers (68%) would prefer to have their overdrawn transaction denied, which comes at no expense to them, rather than pay a $35 fee.[3]

The Overdraft Rule and Its Impact

The overdraft rule went into effect for new account-holders on July 1, 2010 and existing account-holders on August 1, 2010. The Bureau’s study of overdraft programs from June 2013 found that all frequent overdrafters, regardless of their opt-in status, saw their average number of overdrafts decrease following the implementation of the rule.[4] Frequent overdrafters who chose not to opt-in saw a 63% decrease in overdraft fees and saved $347 more than those who elected to enroll in overdraft protection.[5]

Though this rule has limited the most egregious overdraft practices, banks still bring in substantial revenue from overdraft fees. Overdraft fees have remained the largest source of fee revenue from checking accounts since the implementation of the rule.[6] Additionally, the vast majority of overdraft revenue comes from a relatively small percentage of consumers who struggle to keep positive checking account balances.[7] The Bureau’s 2014 data point found that only eight percent of customers incur almost 75% of the revenue of all overdraft fees.[8]

Banks also charge most overdraft fees to customers who have incomes of $50,000 or less. Nearly 7 in 10 of heavy overdrafters made less than $50,000 a year, according to a 2014 national survey.[9] These consumers’ financial status can be further damaged when negative account balances lead to the bank involuntarily closing their bank accounts. In 2011, approximately 6% of accounts that were open at the beginning of the year, or opened during the year, resulted in involuntary closures, according to the Bureau’s research. According to the Bureau’s research, many such account closures are likely due to negative balances incurred through overdrafts.[10]

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[2] Ibid.
[3] Pew, (2016); See also The Pew Charitable Trusts, *Overdrawn: Persistent Confusion About Bank Overdraft Practices*, June 2014, p. 10, available at: https://www.pewtrusts.org/-/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf
[4] Consumer Fin. Protection Bureau, (2013).
[5] Ibid.
[6] Consumer Fin. Protection Bureau, (2014)
[7] Consumer Fin. Protection Bureau, (2013).
[8] Consumer Fin. Protection Bureau, (2014)
[9] Pew (2016) p.5.
[10] Consumer Fin. Protection Bureau, p. 24-7, (2014).

As the Bureau said, “Involuntary account closure is a serious outcome for consumers because it may prevent them from being able to open checking accounts at other institutions.”[11] The account closure may be reported to credit reporting agencies and damage a consumer’s credit standing, potentially adding them to the ranks of an estimated 14 million unbanked adults who lack bank accounts.[12] Conversely, if the consumer had been able to avoid the overdraft fee if the bank simply declined the transaction, they might be able to avoid this extremely negative outcome, and maintain their bank accounts and credit standing.

Overdraft fees remain a serious problem for consumers, and more must be done to protect them from the penalties of overdraft. In this respect, it is worth noting in 2016, at least 20% of large banks already follow best practices recommended by the Pew Charitable Trusts to limit overdrafts, by 1) routinely declining ATM transactions that would cause an overdraft; and 2) routinely declining point-of sale overdrafts. In addition, 59% of banks had voluntarily adopted policies to refrain from reordering transactions from high to low by dollar amount, to maximize overdraft fees. Further regulatory action could ensure that ALL banks follow permanent, consistent protections to shield consumers against excessive overdraft fees.[13]

Consumer Reports strongly urges the Bureau to preserve the existing overdraft rule. Furthermore, we applaud and support any effort to strengthen, not weaken, consumer protections against the abusive nature of overdraft programs. Finally, we remind the Bureau of its critical responsibility to put consumers first - any weakening of this rule would be a step against the consumer interest.

Respectfully submitted,

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[11] Ibid.
[12] Federal Deposit Insurance Corporation, 2*017 FDIC National Survey on Unbanked and Underbanked Households*, October 2018, p.1, available at: https://www.fdic.gov/householdsurvey/2017/2017report.pdf
[13] Pew (2016), p. 7-8.