

September 10, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Director Cordray:

I am writing with regard to the Bureau's recent report on checking account overdraft practices.^[1] As the author of H.R. 1261, the Overdraft Protection Act of 2013, I want to thank you for taking the time to study this important issue, and to highlight two key findings from the overdraft report that I believe provide compelling evidence that additional consumer protections from the Bureau are necessary.

As you know, some progress has been made in protecting consumers from unfair and abusive overdraft fees. For example, in 2009, the Federal Reserve amended Regulation E to require consumers to opt-in to overdraft protection for ATM and non-recurring point-of-sale (POS) debit card transactions. However, as the Bureau's report notes, significant problems remain.

In particular, the Bureau's report provides indisputable evidence that consumers who have not opted-in to overdraft protection are still paying substantial overdraft fees, and that financial institutions are still charging overdraft fees that are disproportionate to the amount of the overdraft. That is why I hope that the Bureau will take action to address these specific problems by expanding opt-in rules to checks and ACH transactions, and by requiring overdraft fees to be "reasonable and proportional."

Expand Opt-In Rules to Checks and ACH Transactions

First, the report found that even among consumers who had not "opted-in" to overdraft protection under the Regulation E rules, overdraft and non-sufficient funds (NSF) fees *still* constituted 41 percent of their total checking account fees. As noted above, the Federal Reserve's 2009 amendment to Regulation E required consumers to affirmatively opt-in to overdraft protection before a financial institution can charge a fee for covering an overdraft, but this rule only covers ATM and non-recurring POS debit card transactions.

The fact that overdraft and NSF fees account for such a large percentage of the total account fees even for consumers who have not opted-in strongly suggests that the current Regulation E rules need to be expanded to cover *all* transaction types where overdraft is prevalent. As the Bureau's report shows, overdrafts are just as likely to occur for checks and ACH transactions as they are for debit card and ATM transactions. Thus, at a minimum, the Bureau should expand the current Regulation E opt-in rules to checks and ACH transactions.

Require Overdraft Fees to be "Reasonable and Proportional"

^[1] See Consumer Financial Protection Bureau, *Data Point: Checking Account Overdraft* (July 31, 2014).

Second, the report found that most debit card overdraft fees were incurred on small purchases of \$24 or less, and yet consumers are charged a median overdraft fee of \$34 for these small overdrafts. Such disproportionate fees might be acceptable if it took consumers a long time to pay back the bank. However, according to the Bureau's report, 29 percent of all overdrafts are brought current the next day, more than half are brought current within 3 days, and 76.1 percent are brought current within a week.

As the Bureau itself pointed out, if a consumer borrows \$24 for three days and pays a \$34 finance charge, that's the equivalent of a loan with a *17,000 percent* annual percentage rate (APR). Unfortunately, the Bureau's report reveals that these 17,000 percent APR loans are commonplace in overdraft programs. The Overdraft Protection Act of 2013 would protect consumers from these outrageous practices by requiring that overdraft fees be "reasonable and proportional" to the amount of the overdraft — thus prohibiting a \$34 fee for a \$1 overdraft. In light of the data in the Bureau's report, I believe that the Bureau should follow suit and require, by rule, that all overdraft fees be reasonable and proportional to the amount of the overdraft.

As the Bureau continues to weigh additional consumer protections for overdraft practices, I respectfully urge the Bureau to consider adopting the protections described in this letter. I look forward to your response.

Sincerely,

Carolyn B. Maloney
Ranking Member
Subcommittee on Capital Markets and
Government Sponsored Enterprises