June 10, 2020

The Honorable Rodney E. Hood, Chairman
The Honorable Todd M. Harper, Board Member
The Honorable J. Mark McWatters, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Tabled Interim Final Rule on Overdraft Policy

Dear Chairman Hood, Board Member Harper, and Board Member McWatters:

The **Center for Responsible Lending (CRL)**, **Self-Help Federal Credit Union**, **Self-Help Credit Union**, and the **National Consumer Law Center (on behalf of its low income clients) (NCLC)** write to share our concerns with the Interim Final Rule on Overdraft Policy that was considered and tabled at NCUA's May Board meeting. Unfortunately, the proposal fails to offer members relief from overdraft fees so desperately needed during the COVID-19 crisis, while subjecting members to additional risks from overdraft programs. In addition, as an interim final rule, the proposal would inappropriately bypass the notice and comment period warranted for any proposal that could increase harm to members from overdraft practices.

The overdraft fee practices of many federal credit unions are fundamentally detrimental to members and inconsistent with the very definition of "Federal credit union" in the Federal Credit Union Act: "a cooperative association organized . . . for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes."[1] Rather than promote sound financial management, so-called "courtesy" overdraft fee programs undermine it. Rather than provide credit for provident or productive purposes, these overdraft fee programs make it harder for members to regain their financial footing, or kick them off the ladder altogether.

Credit unions earn an outsized portion of their fee income through overdraft fees, draining billions of dollars every year from their members through back-end "gotcha" fees.[2] The fees average about $30 each at credit unions,[3] and members are often charged multiple fees in a single day. Across the checking account market, overdrafts are most commonly caused by debit card transactions, which cause overdrafts averaging only $20 each and which the credit union could easily decline at no cost.

The vast majority of overdraft fees are paid by a relatively small portion of members least able to shoulder them. At one credit union of around 10,000 members, 60 members were charged between 50

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[1] 12 U.S.C. § 1752(1).
[2] CFPB Study of Overdraft Programs at 14-15, 2013, https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf (citing NCUA data reporting that credit unions earned $7.4 billion in fee revenue in 2012 and vendor data reporting that 51% of its credit union clients' 2012 fee income was overdraft-related).
[3] *Id.* at 52.

and 214 overdraft fees in one year. The fee was $29 each, meaning these 60 members paid between $1,450 and $6,200 each.

Many people hit by relentless overdraft fees end up having their checking account closed, and reentry is difficult.[4] Overdraft fees exacerbate mental health challenges as well.[5]

African Americans and Latinos are disproportionately harmed by overdraft fees. Across the entire U.S. population, including individuals banked and unbanked, African Americans and Latinos are disproportionately likely to pay multiple overdraft fees annually.[6] This is particularly significant given that African Americans and Latinos are four-to-five times more likely to be unbanked than white Americans,[7] meaning that among those who are banked, African Americans and Latinos pay far more than a representative share of the fees. And their ejection from the financial mainstream when accounts are closed due to overdraft fees only feeds the stark racial disparities in these rates of financial exclusion.[8]

One hallmark dysfunction of today's overdraft programs is that the financial institution repays itself the entire negative balance from the depositor's next incoming deposit. This practice puts the depository first in line for collection before the member has the opportunity to pay for essential expenses or other obligations.

By extending the time period for negative balance resolution from 45 to 60 days, the tabled proposal would extend the period for which the credit union maintains this effective super-lien position. Instead, credit unions should be offering members an amortizing loan to clear the negative balance -- clearly in the better interest of the member -- sooner rather than later. At the same time, the proposal neglects to address the risks the change would pose to credit union members. These risks include the possibility that the credit union will seize significant portions of delayed stimulus or unemployment payments, or other incoming deposits, for repayment of negative balances -- a significant portion of which are comprised of fees that were fundamentally unfair from the start. The proposal also could lead to additional overdraft fees charged during the extended time period.

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[4] *See* National Consumer Law Center and Cities for Financial Empowerment Fund, Account Screening Consumer Reporting Agencies: A Banking Access Perspective (Oct. 2015), *available at* http://www.nclc.org/images/pdf/pr-reports/Account-Screening-CRA-Agencies-BankingAccess101915.pdf.

[5] *See* Lucile Bruce, "'Financial Health' is good medicine in mental health care," Yale School of Medicine, March 23, 2018 (discussing the work of mental health scholar Annie Harper, finding that overdraft fees are among the hidden costs of poverty detrimental to a person's mental health), https://medicine.yale.edu/news-article/16996/.

[6] The Pew Charitable Trusts, *Heavy Overdrafters* at 8 (April 2016) (finding that African Americans and Hispanics each represented 19% of those who paid three or more overdraft-related fees in 2014, while representing only 12% and 17% of the U.S. population as a whole), https://www.pewtrusts.org/-/media/assets/2016/04/heavyoverdrafters.pdf.

[7] About 17 percent of African American and 14 percent of Latino households are unbanked, compared to 3 percent of white households. FDIC 2017 Survey of Unbanked and Underbanked Households at 19 Table 3.2, https://www.fdic.gov/householdsurvey/2017/2017report.pdf.

[8] *See, e.g.*, Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights, and Hilary Shelton, Washington Bureau Director for the NAACP, *Predatory Overdraft Practices Should Be Stopped,* The Hill, Aug. 20, 2013, *available at* http://thehill.com/blogs/congress-blog/economy-a-budget/317679-predatory-overdraft-practices-should-be-stopped.

We encourage the Board to require credit unions to provide members meaningful relief from overdraft fees during the COVID-19 crisis and beyond. NCUA could, for example, require credit unions to cease collecting repayment of negative balances through a single balloon payment from the next incoming deposit, even before the 45-day point; stop charging “sustained” or “extended” overdraft fees when accounts are not quickly brought back to positive; reduce the size of the overdraft fee so that it is reasonable and proportional to the cost to the credit union; and adhere to a meaningful limit on the number of fees charged per month and per year.

Finally, we urge that any proposal with the potential to increase harm to credit union members from overdraft programs be subjected to the normal notice and comment period.

We attach for your reference CRL’s new report on overdraft practices released last week. While the data in the report focuses on overdraft fees by banks in light of the availability of that data, the report notes that credit unions likewise engage in many of the abusive overdraft-related practices the report discusses.

We thank you for your consideration of our concerns and would be happy to discuss them further.

Sincerely,

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