BROKEN BANKING

How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products

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INTRODUCTION

An analysis of recently available data confirms that financial institutions continue to engage in abusive overdraft practices and that reform is urgently needed. This issue brief highlights five key concerns:

1) Overdraft fees remain an enormous drain on checking account customers. Using newly available call report data as the starting point, we estimate that consumers pay nearly $14 billion annually in overdraft fees;[1]

2) Research has consistently found that overdraft fees are disproportionately borne by a relatively small portion of account holders. Further, as an example from our data set of checking account activity helps to illustrate, these fees can multiply, seeming more likely to accentuate income volatility than to smooth it;

3) Our analysis of recently released complaint narratives filed with the Consumer Financial Protection Bureau (CFPB) shows that even consumers who carefully attempt to avoid a negative balance find themselves overdrawn nonetheless and struck by disproportionately harsh overdraft fees as a result;

4) Ultimately, costly overdraft fee practices push some families out of the banking system altogether. FDIC data indicate that approximately 778,800 households and over 1 million adults who once had bank accounts are currently unbanked (primarily due to high or unpredictable fees), while other estimates suggest even greater numbers; and

5) The lucrative revenue from overdraft fees keeps banks from offering lower-cost, responsible banking and credit products for low-income account holders and other vulnerable populations.

Financial institutions typically charge an overdraft fee when a customer's account lacks sufficient funds to cover a transaction, but the institution chooses to pay the transaction anyway. Overdraft fees can be triggered by debit card point-of-sale (POS) transactions, ATM withdrawals, electronic bill payments, and paper checks. Some institutions do not charge overdraft fees on POS or ATM withdrawals, simply declining the transaction at no cost when the account lacks sufficient funds, but many banks do.

The bank typically charges a fee, averaging $35,[2] for each individual overdraft transaction it pays, even when the customer overdrafts by a very small amount. In addition to the high fee, the institution then is also repaid for the overdrafted amount immediately when a customer makes his or her next deposit, in effect "jumping the line" ahead of any other planned transactions the consumer has. If time lags before the account is replenished, the institution may charge additional "sustained" overdraft fees, and a bank is also able to charge for multiple overdrafts before the account is replenished.

1 Based on our updated estimate discussed below; see methodology in Appendix. Including fees for non-sufficient fund (NSF) transactions, this figure climbs to $17 billion.

2 Rebecca Borné & Peter Smith, *The State of Lending in America & Its Impact on U.S. Households: High-Cost Overdraft Fees,* Center for Responsible Lending (July 2013), *available at* http://www.responsiblelending.org/state-of-lending/overdrafts/ [CRL State of Lending].

Sound regulatory policy—rules that prohibit unfair, deceptive, 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. As discussed more fully at the end of this paper, we urge the Consumer Financial Protection Bureau to:

- Require that overdrafts fees be reasonable and proportional to the cost to the institution of covering the shortfall;
- Limit overdraft fees to one per month and six per year;
- Subject overdraft programs to credit protections, including permitting repayment in affordable installments.

"I have paid over {$3000.00} in less then XXXX years because of this. I am a single mom of XXXX, that makes enough to cover bills. however with what i pay in overdraft fees it has put me in a hole. i pay the fees, then on top of that I have to pay for my bills putting me back into the hole. i get paid every XXXX weeks, in XXXX week i had to pay over {$630.00} because of how they processed the transactions, i only make {$690.00} every two weeks."

CFPB Complaint ID 1408210 (received 6/5/2015).

Where We Are:

Banks combine abusive practices to create high, repeat fees, from which many consumers do not recover. First, the fee is often grossly out of proportion to the size of the overdraft itself. For debit card point-of-sale (POS) overdrafts, which trigger more overdraft fees than any other transaction type, the median overdraft is only $20, yet the fee is $35, a penalty approaching twice the size of the actual overdraft. Secondly, once a consumer's account is overdrawn, he or she is often caught in a series of overdraft fees. Financial institutions typically charge a fee for every individual overdraft transaction, regardless of how small; they often charge additional "sustained" or "extended" overdraft fees if the account remains negative for several days; and some continue to use transaction posting practices that maximize the number of transactions that post against a negative balance and thus trigger a fee.

Further, the financial institution repays itself the fees and the value of all overdraft transactions directly from the customer's next incoming deposit (pay or benefits, like Social Security, military/veterans, or unemployment). This typically occurs only three days later,[3] which is telling in at least two ways. First, the bank extends the overdraft credit for a very short period, meaning that the cost of funds to the bank is very little. Second, the short repayment period connotes an account holder who almost makes it to payday, only to be hit with one, several, or many, disproportionate fees.

Some financial institutions permit certain customers to avoid high overdraft fees by linking their accounts to overdraft lines of credit or a credit card. Other customers may link their account to a savings account to have funds transferred into their checking account to cover overdraft transactions. These services are typically far lower cost than the fee-per-transaction model. But these links are typically only available to those with relatively strong credit histories or available savings. Others are relegated to a predatory product.

How We Got Here:

Overdraft programs did not always operate this way. Historically, financial institutions occasionally covered account holders' paper checks when the account lacked sufficient funds as a courtesy; sometimes, they charged a fee. In the early 2000s, financial institutions extended overdraft fees to debit card transactions, even though there was no rational basis for doing so: These transactions, unlike paper checks, could simply be declined at check-out, at no cost to the financial institution, when the customer lacked sufficient funds. The extension of overdraft fees to debit cards—a rapidly growing payment mechanism, with many consumers using their debit card multiple times daily—fueled an exponential growth in overdraft fees during the 2000s.

In 2009, the Federal Reserve took a modest regulatory step by requiring that financial institutions obtain a customer's one-time "opt-in," or nominal consent, before charging the customer overdraft fees on future debit card POS or ATM transactions. This action had mixed results. On one hand, it resulted in some consumers no longer being charged these fees, and total overdraft fees paid annually decreased after enactment of the rule. On the other hand, the rule did nothing to protect consumers from whom financial institutions managed to obtain an "opt-in." And as discussed below, some financial institutions went, and some continue to go, to extreme efforts to obtain opt-ins. The rule did nothing to address the size of the fee, the number of fees a customer may be charged, or practices banks engage in to maximize fees. It also did not at all address overdraft or non-sufficient funds (NSF) fees on checks or electronic bill-pay transactions.

3 CFPB, *CFPB Data Point: Checking account overdraft* at 23 (July 2014), *available at* http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf *[CFPB Data Point].*

Predatory Overdraft Fees Cost Billions Overall and Thousands to Many Account Holders

For the first time in 2015, banks with greater than $1 billion in assets were required to publicly report their overdraft and non-sufficient fund (NSF) fee revenue.[5] Based on these figures, account holders at these banks paid over $17 billion annually in overdraft and NSF fees.[6] We estimate that account holders across the entire national market of banks and credit unions pay over $17 billion annually in overdraft and NSF fees combined, nearly $14 billion of which comes solely from overdraft fees. These figures are conservative in that they do not include sustained overdraft fees charged by banks, since these fees are not included in the call report line item; [7] CFPB research found that sustained fees account for approximately 9% of overall overdraft/NSF revenue at large banks that charge sustained fees.

"The high cost of being poor has two main implications. First, inequality is worse than income figures alone suggest. This is true even before non-financial disparities, such as the implications for health of living on a low income, are considered. Second, finding ways to reduce these costs, for instance by making it easier to claim the EITC without borrowing, or by changing the rules on overdraft fees (which at the moment are used to cross-subsidise banking for other customers), would be a cheap way of helping low earners—and bargains are rare for the poor."[4] [emphasis added]

The Economist, Editorial, Sept. 2015

In total, overdraft and NSF fees cost Americans more than twice what they spend annually on eggs ($7.4 billion), far more than they spend on baby clothes ($9.7 billion), and more than they spend on books, newspapers, and magazines combined ($13.1 billion).[8]

4 The Economist, Editorial, It's expensive to be poor: Why low-income Americans often have to pay more, Sept. 5, 2015, *available at* http://www.economist.com/news/united-states/21663262-why-low-income-americans-often-have-pay-more-its-expensive-be-poor [Emphasis added.]

5 Non-sufficient fund revenue describes the fee charged when the institution rejects a payment instead of paying it; these fees are charged only on electronic bill payments and paper checks. When debit card POS or ATM transactions are declined due to insufficient funds, no fee is charged. (When they are paid despite insufficient funds, as noted earlier, typically an overdraft fee is charged.)

6 For methodology in deriving estimate, *see* Appendix.

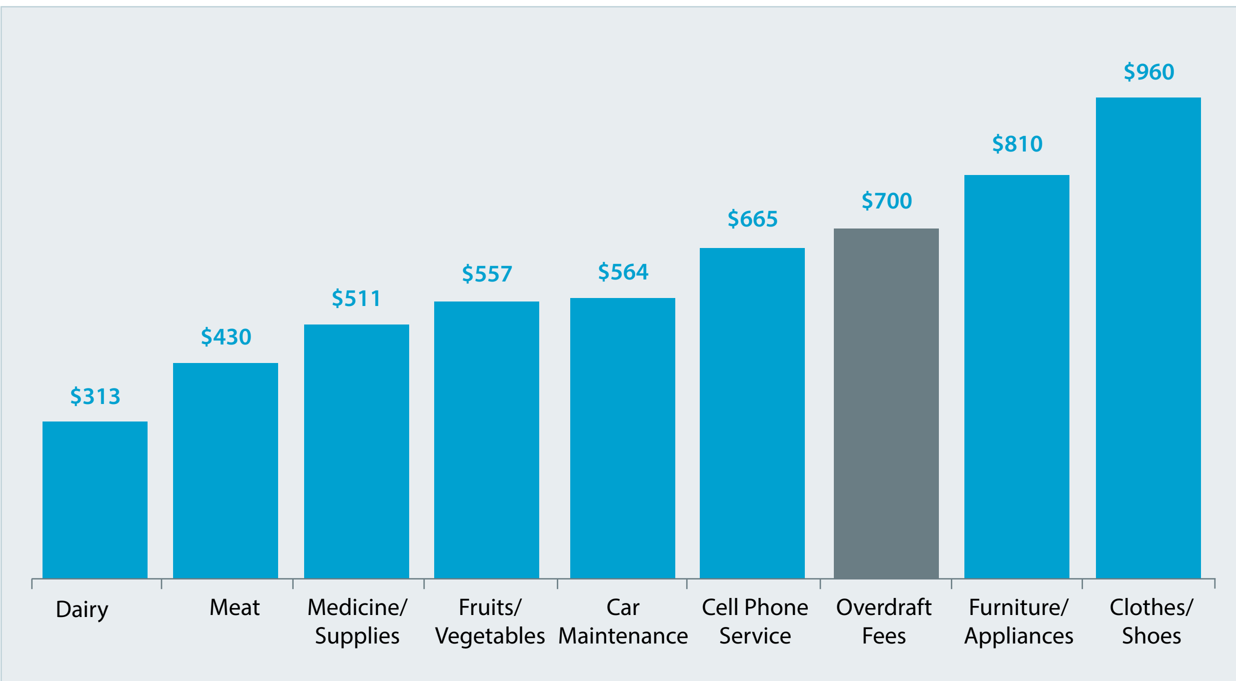
7 CFPB Data Point at 10.

8 Data derived from Bureau of Labor Statistics Consumer Expenditures, based on average household expenditures by 127,006,000 American households, accessible at: http://www.bls.gov/cex/2014/combined/age.pdf.

But even more striking is how much some individual households pay in these fees. CFPB found that nearly three-fourths of overdraft and NSF fees are paid by only 8% of account holders, who incur 10 or more fees per year.[9] By CRL's most recent disaggregate estimates, which allow us to estimate granular patterns of overdraft use, we have found nearly 2 million Americans pay 20 *or more* overdraft fees annually, translating to $700 *or more*.[10] (This figure does not include NSF fees, which drive costs to families higher.)

For a household, particularly a low-income family, $700 annually is significant, and losing these funds to overdraft fees may put needed items out of reach. To put $700 in perspective, for a household living at half the median income—or about $26,800 annually—$700 is more than the $500 they pay annually for medicine and medical supplies, and nearly as much as the $743 paid for all dairy and meat products combined.[11] See Figure 1 below. Likewise, $700 in overdraft fees is equivalent to a significant portion of the Earned Income Tax Credit (EITC) allocated to low- to moderate-income households to reduce poverty among working persons. The average EITC amount is $2,400;[12] the $700 paid by those who overdraw most frequently would essentially erase nearly a third of it.

Figure 1: Annual Overdraft Fee Cost at 20 Fees Annually, as Compared to Common Expenditures



Source: CRL State of Lending and Consumer Expenditure Survey, 2014 (at half of median income)

9 CFPB, *CFPB Data Point: Checking account overdraft* at 12, Table 3 (July 2014), *available at* http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf *[CFPB Data Point]*.

10 Rebecca Borné & Peter Smith, *The State of Lending in America & Its Impact on U.S. Households: High-Cost Overdraft Fees,* Center for Responsible Lending at 12 (July 2013), *available at* http://www.responsiblelending.org/state-of-lending/overdrafts/ [CRL State of Lending].

11 Consumer Expenditure Survey, 2014, Table 1202, for consumer unit earning $20,000–29,999 annually, *available at* http://www.bls.gov/cex/2014/combined/income.pdf. The median household income was $53,657 in 2014 per the U.S. Census Bureau.

12 Based on EITC 2015 Calendar Year Report and accessed at https://www.eitc.irs.gov/EITC-Central/eitcstats.

Figure 2: Disproportionate, Multiple Fees

Date	Amount	Transaction Detail	Type	Credit	Fee
9/24/2012	$4.17	Purchase with ATM card Quick Way #4 974102 092112 70380 Hwy 1077 Covington LA	Debit	$4.17	
9/24/2012	$35.00	Overdraft Charge Dr Amt 4.17 0000000000 09 2412	Debit		$35.00
9/24/2012	$73.06	Purchase with ATM card Kohl's #1110 000009 092212 6103 Pinnacle Parkway Covington LA	Debit	$73.06	
9/24/2012	$35.00	Overdraft Charge Dr Amt 73.06 0000000000 092412	Debit		$35.00
9/24/2012	$2.27	Purchase with ATM Card Mr. Qiuk of Bus 191001 092312 Mr. Qiuk OF81550 Hwy 21 Bush LA	Debit	$2.27	
9/24/2012	$35.00	Overdraft Charge Dr Amt 2.27 0000000000 092412	Debit		$35.00
9/25/2012	$36.51	Purchase with ATM card 092312 Shell Oil 517201501QPS Covington LA	Debit	$36.51	
9/25/2012	$35.00	Overdraft Charge Dr Amt 36.51 0000000000 092512	Debit		$35.00
9/25/2012	$10.31	Purchase with ATM card 092312 WOW 21 LLC Covington LA	Debit	$10.31	
9/25/2012	$35.00	Overdraft Charge Dr Amt 10.31 0000000000 092512	Debit		$35.00
9/26/2012	$2.05	Purchase with ATM card 092512 FedEx Office 00009860 Covington LA	Debit	$2.05	
9/26/2012	$35.00	Overdraft Charge Dr Amt 2.05 0000000000 092612	Debit		$35.00
			Total	$128.37	$210.00

Source: CRL analysis of 2012 Lightspeed Data

Further, these fees are often not spread evenly throughout the year but come in unpredictable, sporadic episodes. A single negative balance episode can trigger hundreds of dollars in fees in just a few days.[13] For example, as shown in Figure 2 above, a consumer whose activity we can observe in our Lightspeed data[14] is initially charged a $35 overdraft fee for a $4.17 purchase made on September 21 and subsequently incurs overdraft fees for purchases on September 22 and 23. The fees and transactions are posted to the account on the 24th, and he is charged two more $35 fees for small purchases on the 25th and one more on the 26th *for a $2.05 purchase*. Finally on the 28th, he manages to bring the account back to positive with $1,000 in deposits, but not before paying $210 in fees for the $128.37 borrowed for less than a week, including $105 in fees for debit card purchases under $5.

13 *See, e.g.*, this consumer narrative filed with the CFPB Consumer Complaint Database: "In the course of 2 days, . . . I had XXXX - {$35.00} fees from [bank] that equated to {$310.00}. Mind you that my account was only {$110.00} negative." CFPB Consumer Complaint Database, Complaint ID 1451188 (received 7/4/2015).

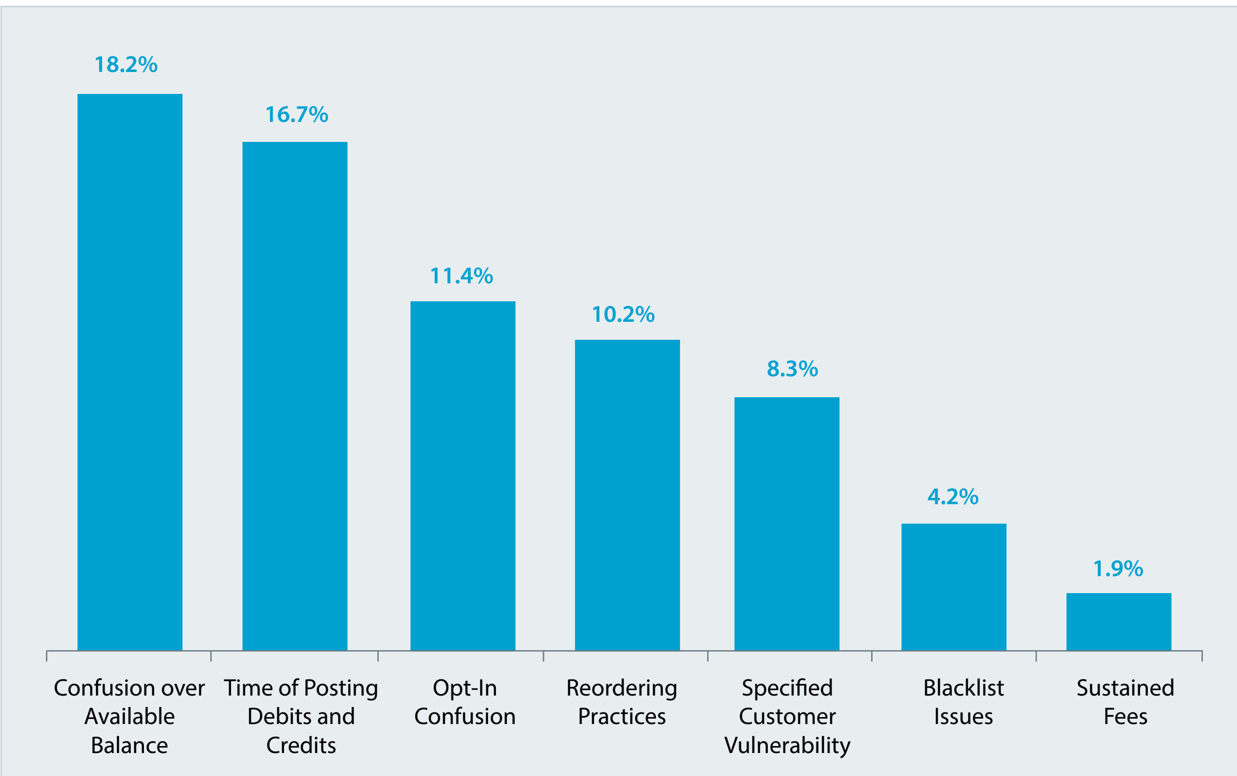
14 The Ultimate Consumer Panel, maintained by Lightspeed Data, contains transaction- and account-level data for over 2,000 American customers of the largest 19 American banks by asset size.

A growing body of research has pointed to the income and expense volatility many families experience.[15] When a consumer experiences overdraft fees, these fees can increase volatility, rather than smooth it, putting the account holder only deeper in the hole.

CFPB Consumer Complaint Narratives Illustrate a Deck Stacked against Consumers

This year, the Consumer Financial Protection Bureau (CFPB) made public the complaint narratives consumers have filed with the agency about checking accounts, offering a qualitative perspective into consumer experiences with overdraft fees. Between March and August of 2015, approximately 265 complaints were filed with CFPB that mentioned overdraft products. We reviewed these narratives and categorized them by the specific one or two issues they raised. The chart below indicates the seven most frequent issues, which we then explain in more detail. One of the most salient themes within these complaints is the difficulty avoiding overdrafts even when consumers believed they would. Often, this was related to bank practices that make it difficult for consumers to know balance availability, transaction timing, or whether or not overdraft transactions would be paid or declined. Implicit in virtually every complaint are two practices discussed above: unreasonably high fees per transaction and no meaningful limits on how frequently a consumer can be assessed a fee.

Figure 3: Top Overdraft Consumer Complaint Issues, by Percentage of Total Complaints



15 *See* U.S. Financial Diaries, http://www.usfinancialdiaries.org/charts, at slide 2.7, 2.10, finding 56% and 31% income volatility (even excluding tax refunds) among the lowest and second-lowest earning households studied, and that income and expense spikes often do not coincide; JP Morgan Chase & Co. Institute, *Weathering Volatility: Big Data on the Financial Ups and Downs of U.S. Individuals* (May 2015), *available at* http://www.jpmorganchase.com/corporate/institute/document/54918-jpmc-institute-report-2015-aw5.pdf, finding that individuals experience a high level of income volatility, and an even higher level of consumption volatility, across the income spectrum, and that, again, these volatilities do not move in tandem.

Further Explanation of each Category

Confusion over Available Balance

These customers conveyed that based on their actual review of their available balance, often including any "pending" transactions, they believed funds were available for transactions they made, but they later learned the transactions had triggered overdraft fees.

The following complaint narrative indicates that a customer was charged $150 in overdraft fees after believing, based on online balance information, that the account would not become overdrawn:

> "I thought I had positive balance when in actuality I had a negative balance because what was on the website was not the real balance. I attached my last withdrawal, when I thought I had enough in my account to do so. I would have taken out less cash if I had known they took the pending debits off my balance. That 's trickery they used. I ended up being charged overdraft fees and then extended overdraft fees that added up to around {$150.00}."
>
> CFPB Consumer Complaint Database, Complaint ID 1419143 (received 6/12/2015).

Timing of Transaction Posting (Debits and Credits)

These complaints reflected the often opaque nature of institutions' policies relating to the timing of availability of deposits or posting of debits.

The following complaint narrative indicates that a customer was charged an overdraft fee even after, based on her review of account activity, her check appeared to have posted against adequate funds:

> "My account had a balance of {$220.00} on XXXX XXXX, 2015 when a check written for {$200.00} was posted to my account. I spoke to a representative who advised me that there were insufficient funds to cover this check. This is very misleading because my account showed a positive balance of {$26.00} after this check was posted on XXXX XXXX, 2015 . . . . Please see evidence of transaction activities attached."
>
> CFPB Consumer Complaint Database, Complaint ID 1462545 (received 7/10/2015).

A review of the complaints captured by both of these two most frequent categories suggests consumers who are carefully trying to avoid overdraft, and often believe they will avoid it. They often check their available balance daily or even more frequently—only to end up being hit by fees nonetheless. It is problematic that financial institutions have strong incentives—$35 per overdraft—to continue to make it difficult for consumers struggling to stay positive to understand how all of the pieces (available balance, pending transactions, deposit availability, debit holds, and posting of transactions) fit together. It is also problematic that the price for what is often such a "close call" is so steep.[16]

Opt-in Confusion

These complaints reflected confusion around Regulation E's requirement that banks obtain the consumer's "opt-in" before assessing fees on overdrafts incurred by POS debit card or ATM transactions. Typically, it appeared that consumers either did not know they were opted-in or did not understand that Regulation E provides no protection related to overdraft fees triggered by other types of transactions, like electronic bill pay transactions or paper checks.

The following two examples illustrate that bank transaction processing and related overdraft practices are inherently confusing, and that the opt-in rule is confusing and limited:

> "I am not opted in to any overdraft protection at my bank. They allowed XXXX debit card transactions to complete on my account for XXXX and XXXX. They stated that even though they are debit card transactions and not electronic funds transfers or checks, they are not considered XXXX debit card transactions since they are paid at the same time and amount every month and I am therefore not protected by consumer protection laws for these transactions."
>
> CFPB Consumer Complaint Database, Complaint ID 1397594 (received 5/29/2015).

> "Time and time again I told [Bank] that I do not wish to Opt into their overdraft protection plan, but yet still I am being charged overdraft fees."
>
> CFPB Consumer Complaint Database, Complaint ID 1354191 (received 4/29/2015).

16 Though many banks will no longer charge an overdraft fee for an overdraft balance of less than, e.g., $5 or $10, this "de minimus" policy provides a very small cushion and typically applies to a day's final balance, as opposed to any individual transaction.

Reordering Practices

These complaints addressed the practice of reordering incoming debit transactions to post larger ones before smaller ones, depleting the account more quickly and thus triggering more overdraft fees.

The following complaint narrative was submitted by a customer whose $300 purchase was posted before three smaller purchases, which occurred earlier, resulting in $140 in fees:

"[Bank] consistently changes the order of my transactions to put me in the negative and then rails me with overdraft fees. The {$300.00} charge on my account is being charged before prior purchases, as to put me in the negative, and then hand me {$35.00} overdraft fees on 3 very small purchases I had made prior while in the positive. I am about to be out {$140.00} in fees alone because of this malicious practice."

CFPB Consumer Complaint Database, Complaint ID 1460386 (received 7/9/2015).

Specified Customer Vulnerability

These complaints specifically mentioned facts indicating the customer was struggling financially to maintain a positive account balance, including for example: lost employment, single parent on limited income, or relying on Social Security benefits.

The following complaint narrative was submitted by a single parent trying hard to monitor his or her account but still being hit with multiple, unreasonably large overdraft fees:

"I live paycheck to paycheck. I check my bank account balance daily if not XXXX a day. The bank I use … offers online and text banking so it makes it very convenient. The problem is they do not match up. Some of the dates that transaction posts change. For example on XXXX night, the XXXX, I checked my balance through text banking. I had {$380.00} in my account. The next morning, XXXX the XXXX, when I got to work at XXXX I went online and checked my balance and transactions. It still said I had a balance of {$380.00} …. Again, I went online and I see that both those absent checks had cleared but XXXX of those had a date of XXXX the XXXX. That transaction was not on my statement in the morning. They hit me with XXXX overdraft fees. … I would really appreciate it if someone would look into this … I only bring home {$XXXX} a week and I'm a single parent of XXXX. Thank you."

CFPB Consumer Complaint Database, Complaint ID 1429242 (received 6/19/2015).

Blacklist Issues

These complaints conveyed that overdraft fees had resulted in the consumer's being listed in Chexsystems or Early Warning Service, which makes it difficult or impossible for a consumer to access a checking or savings account at another financial institution (see further discussion of these blacklists in the following section).

The following complaint narrative indicates that a customer was unable to open a new account despite persistent efforts, including demonstrating he or she had paid what was owed on a prior closed account:

"I have been denied from every financial institute you can think of and this is becoming a huge burden and hindering the progression of my business. I have tried everything from disputing the info, providing documents showing it has been paid in good faith and spoke with early warning several times and I am being told that the information will stay on my record preventing me from opening a new account for a total of XXXX years! … I need an open active account and this is unfair and unjust treatment due to a minuscule amount owed to [bank] but has been paid in full."

CFPB Consumer Complaint Database, Complaint ID 1474368 (Received 7/17/2015).

Sustained Fees

These complaints addressed the practice whereby an institution charges additional overdraft fees—typically about $7 per day, or an additional $35 fee after several days—if a consumer is unable to return the account to positive quickly.

The following complaint narrative was submitted by a customer for whom an extended overdraft fee exacerbated the situation, and subsequent overdraft fees left the customer without needed funds to pay bills:

"[A]fter being a customer for 20 years, with sole income for my XXXX direct deposited every month with no problems, suddenly had a fraudulent overdraft fee. I went to the local branch and they agreed to remove the fee, but 6 days later got an extended overdraft fee. Now I have XXXX more overdraft fees which would not have occurred if they followed through on their agreement. I live check to check and have always been careful in balancing my ledger and had sufficient funds from the very first overdraft fee … I will not be able to pay XX/XX/XXXX bills thanks to them."

CFPB Consumer Complaint Database, Complaint ID 1487286 (Received 7/26/2015).

Predatory Overdraft Fees Wash Many Consumers out of the Banking System, often with Long-Term Financial Consequences

Though the diversion of cash needed for living expenses toward fees is alone enough to devastate a family living on the margins, the consequences do not stop there. For some, overdraft fees prevent them from regaining their footing, marking a devastating economic setback.[17]

Overdrafts are the leading reason that consumers lose their checking accounts.[18] The FDIC's 2013 survey of unbanked and underbanked households indicates that approximately 778,800 households, and well over 1 million adults, who once had bank accounts are currently unbanked primarily because of high or unpredictable fees.[19] It is likely that in the majority of those cases, the fees at issue were overdraft/NSF fees, as they are both the largest fee and comprise the majority of checking account service charge revenue.

17 "I have paid over {$3000.00} in less then XXXX years because of this. I am a single mom of XXXX, that makes enough to cover bills. however with what i pay in overdraft fees it has put me in a hole. i pay the fees, then on top of that I have to pay for my bills putting me back into the hole. i get paid every XXXX weeks, in XXXX week i had to pay over {$630.00} because of how they processed the transactions, i only make {$690.00} every two weeks." Complaint ID 1408210 (received 6/5/2015).

18 Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures* at 6, (June 6, 2008), *available at* http://www.bostonfed.org/economic/cprc/conferences/2008/payment-choice/papers/campbell_jerez_tufano.pdf (noting that virtually all involuntary bank account closures—i.e., when the financial institution closes a consumer's account—are due to overdrafts, and that their results suggest questions that include: "[T]o the extent that involuntary closure is the endogenous outcome of bank policies to allow liberal opening of so-called 'free' accounts (which might be better described as overdraft 'fee' accounts), has the banking system exacerbated closures to increase fees from penalty charges?"). The CFPB found that consumers whose debit cards could trigger overdraft fees were more than 2.5 times more likely to have their accounts involuntarily closed than those who were not "opted in" to debit card overdraft fees at several study banks. CFPB, *CFPB Study of Overdraft Programs: A white paper of initial data findings* at 34 (June 2013), *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf *[CFPB White Paper]*). And as the CFPB's prepaid card proposal notes, one study found that 41% of prepaid card users who had ever had a checking account either closed their account or had an account closed by the institution because of overdraft or bounced check fees. 79 Fed. Reg. 77906, citing The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views,* at 7 (Feb. 2014).

19 The FDIC finds that there are nearly 9.6 million unbanked households, 45.9% of which were previously banked, with 17.7% of those previously banked households reporting high or unpredictable fees as the main reason they were unbanked. 2013 *FDIC National Survey of Unbanked and Underbanked Households* at 4-6 (Oct. 2014), *available at* https://www.fdic.gov/householdsurvey/2013report.pdf. This computes to approximately 4.4 million previously banked households, 778,000 of which report high or unpredictable fees as the main reason they were unbanked.

The FDIC report further states that the nearly 9.6 million households represent 16.7 million adults and 8.7 million children; this suggests that these 778,000 households represent, on average, 1.35 million adults and 705,000 children.

A Pew survey of the working poor found that even higher rates of the recently unbanked cited unexpected or unexplained fees as the primary driver of account closure, with 32% citing this reason. The Pew Charitable Trusts, "Slipping Behind: Low Income Los Angeles Households Drift Further from the Financial Mainstream," at 7 (October 2011), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/safe_banking_opportunities_project/Slipping20Behindpdf.pdf.

Other data suggest even greater numbers of affected individuals. Once ejected from the banking system, the ejecting financial institution reports the account holder to a screening database, like Chexsystems or Early Warning Service. These are essentially blacklists, where the consumer's name remains for five years, often preventing him or her from being offered a checking or savings account with another financial institution.[20] While there are no national data on the number of consumers on bank account blacklists, millions of consumers are affected, with one software company estimating that 2.3 million online applicants were denied accounts based on their screening report in 2012 alone;[21] the large majority of consumers blacklisted are blacklisted because of overdrafts.[22]

The costs of exclusion from the banking system can be profound. A banking relationship is important to household financial stability and asset-building. A checking account protects funds from physical risk, offers a relatively low-cost and convenient way to conduct routine financial transactions, provides mechanisms for savings, and, for many families, is the gateway to a broader banking relationship that includes access to reasonably priced credit.

Thus, the costs of exclusion are both direct and indirect.[23] One portion of direct costs is check-cashing fees; the savings from having a checking account versus relying on check-cashing services has been estimated to be up to $40,000 over the course of a lifetime.[24] Indirect costs include diminished opportunity to securely save.[25] Indeed, research has found that banking facilitates savings. Pew has found that 88% of banked households have at least one savings account. Even in times of economic turmoil, among the working poor, 67% of banked households reported still being able to save, while only 9% of unbanked households could.[26]

20 For a thorough discussion of these account screening databases, problems with them, and recommendations to address those problems, *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.

21 National Consumer Law Center and Cities for Financial Empowerment Fund, *Account Screening Consumer Reporting Agencies: A Banking Access Perspective* (Oct. 2015) at 6, *available at* http://www.nclc.org/images/pdf/pr-reports/Account-Screening-CRA-Agencies-BankingAccess101915.pdf (citing Blake Ellis, *Bank Customers—You're Being Tracked,* CNN, Aug. 16, 2012, at http://money.cnn.com/2012/08/16/pf/bank-account-history, citing Andera, a software provider for banks, and noting "The estimate is based on Andera's rejection rate and nationwide online application data. And it doesn't include applications rejected in bank branches—where most people apply for accounts.").

22 Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures* at 6, (June 6, 2008), *available at* http://www.bostonfed.org/economic/cprc/conferences/2008/payment-choice/papers/campbell_jerez_tufano.pdf.

23 Tyler Desmond and Charles Sprenger Federal Reserve Bank of Boston, Estimating the Cost of Being Unbanked (Spring 2007), https://www.bostonfed.org/commdev/c&b/2007/spring/article9.pdf.

24 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 (citing Matt Fellowes and Mia Mabanta. Banking on Wealth: America's New Retail Banking Infrastructure and Its Wealth-Building Potential. Issue brief. Brookings Institute, Jan. 2008, *available at* www.brookings.edu/~/media/research/files/reports/2008/1/banking%20fellowes/01_banking_fellowes.pdf, assuming a full-time worker who cashes checks bi-weekly over a 40-year career, see p.15).

25 The FDIC notes: "[A mainstream banking relationship] provides opportunities for households to deposit funds securely, conduct basic financial transactions, accumulate savings, and access credit on fair and affordable terms." FDIC 2013 Survey of Unbanked and Underbanked Households at 4, *available at* https://www.fdic.gov/householdsurvey/2013report.pdf.

26 The Pew Charitable Trusts, "Slipping Behind: Low Income Los Angeles Households Drift Further from the Financial Mainstream," (October 2011), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/safe_banking_opportunities_project/Slipping20Behindpdf.pdf.

Lack of a bank account is a problem felt most acutely by lower-income individuals[27] and communities of color.[28] Civil rights leaders have noted the cost of this financial disenfranchisement when urging reform of bank overdraft practices: "Once a person is ejected from the mainstream financial system, it becomes difficult to reenter. And the unbanked and underbanked are more likely to end up with no choice except alternative financial services, which are often more expensive and less secure than a responsible mainstream checking account." [29]

Banks' practices play a dominant role in shaping their customers' experiences with overdraft and, thus, the success or failure of the customer's banking relationship. For example, the CFPB found that consumers whose debit cards could trigger overdrafts were more than 2.5 times more likely to have their accounts involuntarily closed than those who were not "opted in" to debit card overdraft at several study banks.[31] Some banks, including several of the largest, do not permit POS and/or ATM transactions to trigger high-cost overdraft fees at all,[32] thereby removing the possibility for their account holders to lose their accounts as a result of those kinds of overdrafts.

"…I am a … single mother ... I am writing this complaint as I have no where else to turn … The overdraft on my account was simply an oversight. It was no way intended to cause fraud [as was presumably reported to a database like Chexsystems] … The overdraft amount was {$7.00} according to my print out. I paid [the bank] for the overdraft and any associated fees a few years ago. The word Fraud has been hanging over my head ever since …. I am a law abiding working citizen that made a minor mistake and its costing me dearly."

Consumer complaint filed with CFPB[30]

27 Unbanked rates decrease as income increases: Those making less than $15,000: 27.7% unbanked; $15–30,000: 11.4% unbanked; $30–50,000: 5.1% unbanked; $50–75,000: 1.7% unbanked; $75,000+: 0.5% unbanked. FDIC 2013 Survey of Unbanked and Underbanked Households at 16, *available at* https://www.fdic.gov/householdsurvey/2013report.pdf.

28 The 2013 FDIC survey found that 7.7% of all households were unbanked, but the share was much higher for the African-American and Latino communities, at 20.5% and 17.9%, respectively. FDIC 2013 Survey of Unbanked and Underbanked Households at 16, *available at* https://www.fdic.gov/householdsurvey/2013report.pdf.

29 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.

30 Complaint ID 1375562 (received 5/14/2015). The complaint continues: "And if [this bank]does not want my business, I understand but please dont make it hard for me to move on to another financial institution … Life is a struggle as it is and with paying additional fees to cash my payroll check or pay for pre-paid cards is really hard on me … I have suffered enough. Again, please review your records as the account was not intended to be used for any mis-leading purposes. I have attached the printout that was given to me and a letter."

31 CFPB, CFPB Study of Overdraft Programs: A white paper of initial data findings at 34 (June 2013), *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf *(CFPB White Paper*).

32 For example, Citi and HSBC do not have POS or ATM high-cost overdraft programs, BoA does not have a POS program, and Chase does not have an ATM program.

Those who defend high-cost overdraft programs are often quick to note that account holders who pay overdraft fees have little in the way of "other options." [33] And research does appear to support that those who overdraw frequently tend to have significantly lower credit scores than those who do not.[34] But struggling account holders who incur substantial overdraft fees are likely left worse off. In many cases, the original transaction could be declined at no cost, allowing the account holder to seek out other resources, or in some cases, postpone the transaction until funds are available. Further, in the payday lending context, research has shown that, in order to ultimately repay a high-cost payday loan, many borrowers must turn to friends and family or pawn possessions—options that would have been available at the outset, before the borrower incurred extremely high borrowing costs.[35] The same dynamic likely often occurs in the overdraft context, where the high-cost credit exacerbates, rather than addresses, a shortfall.

Overdraft Fees Have Produced a Dysfunctional Checking Account Market and Stifled Development of Responsible, Helpful Products

A. Overdraft Fees Have Produced a Dysfunctional Checking Account Market Driven by Back-End "Gotcha" Fees.

Overdraft fees have fueled the development of a profoundly dysfunctional checking account market. When consumers shop for a bank account, they are likely to consider factors like fixed monthly and annual costs of the account and be unable to assess the likelihood that they will trigger overdraft charges. In some cases, they may in fact not be aware of the potential overdraft fees charged on the account. 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 on an account that has a modest monthly fee but more responsible overdraft fee practices. Instead, overdraft charges operate as "back-end" or "gotcha" fees that undermine consumer choice and a healthy market, and in fact, may even subsidize free accounts for a larger customer base.

33 *See, e.g.,* American Bankers Association, Letter to CFPB, Oct. 17, 2013, *available at* https://www.aba.com/Advocacy/LetterstoCongress/Documents/LetterCFPBConsumerSurveyOct2013.pdf, ("Regular users [defined by the ABA here as those with more than six overdraft fees in twelve months] would have few options if access to overdraft services is limited . . . The Consumer Survey revealed that overdraft protection provides an important liquidity bridge for middle income consumers who are increasingly challenged to 'make ends meet' . . . An important question to be answered by policy-makers is where regular users will turn for emergency funds if they no longer have access to overdraft protection"). Notably, the ABA refers to overdraft funds as "emergency funds," even while its survey appears to have found that the funds are more likely to go toward routine, recurring expenses than unexpected expenses.

See also G. Michael Flores, Bretton Woods, Inc., and Todd J. Zywicki, George Mason University School of Law, *Commentary: CFPB Study of Overdraft Programs,* http://www.law.gmu.edu/assets/files/publications/working_papers/1360.pdf (noting the significantly lower credit scores of those who overdraw relatively frequently and criticizing the CFPB's white paper on overdraft programs by noting that "it fails to address its own central question, which is whether less expensive alternatives are available to those who use it").

34 *See id. at 7* citing a Raddon Financial Group survey on file with the paper's authors, finding that 70% of consumers who overdraw at an "elevated" rate report having "fair" or "poor" credit scores (38% and 32%, respectively), while only 7% report having an "excellent" score. This is in contrast to consumers who do not overdraft, of whom only 9% report having a "poor" score, while 74% report having an "excellent" or "good" score. The paper does not note the portion of non-overdrafting consumers in the survey who report a "fair" score.

35 The Pew Charitable Trusts, Safe Small-Dollar Loans Research Project, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans* at 36 (Feb. 2013), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/Pew_Choosing_Borrowing_Payday_Feb2013.pdf.

Today, some overdraft practices vary significantly by institution, but often not in ways transparent to the consumer. For example, at some banks CFPB studied, "opt-in" rates on POS and ATM overdraft fees were 40%; at others, they were less than 10%.[36] Further, for those customers that incur overdraft fees, at some banks they average nearly twice in total fees annually than at other banks.[37] These disparities underscore that opaque choices banks make about how to implement their overdraft program can have a dramatic impact on consumers.[38]

In addition, that most checking account fees are derived through back-end "gotcha" fees fuels aggressive, heavy-handed marketing efforts to convince people to "opt-in," rather than transparent, upfront price tags. Our review of 2014 checking account marketing materials noted the following language in correspondence aimed at convincing customers to "opt-in." [39] While these examples do not reach the level of deception we noted in reports at the time opt-in was implemented,[40] they do illustrate willingness on the part of some institutions to suggest that having a debit card transaction declined (if they do not opt-in) will trigger a fee, when it actually does not:

"When your items are paid, this service will help save you the embarrassment of an ATM or everyday debit card transaction being declined or the inconvenience of a check or ACH item being returned, as well as the fee normally charged to you by merchants for items returned to them." [41]

A similar dynamic—low upfront costs, high back-end, hidden costs—was once at play in the credit card market, where interest rates were often low, but back-end penalty fees were unrestrained. The Credit CARD Act of 2009 reined in abusive fees and penalty rates. The result was a shift toward upfront pricing—and with a market far more transparent—a substantial reduction in overall costs.[42]

More upfront pricing for checking accounts would provide incentive for financial institutions to have more responsible checking account models, rather than one that preys upon those with the least resources. And it would likely still permit many to maintain "free" checking accounts (banks often waive fees for those with direct deposit or other features), but it would make the distribution of costs far more closely correspond to the receipt of services.

36 CFPB, CFPB Study of Overdraft Programs: A white paper of initial data findings at 32 (June 2013), *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf *[CFPB White Paper]*.

37 *Id.*

38 These choices range from largely visible ones—like whether or not to charge overdraft fees on POS and/or ATM transactions—to largely hidden ones, like when transactions are posted, calculating available funds, and how large the customer's overdraft "credit line" is.

39 Examples on file with authors. CRL uses the Mintel Comperemedia database to investigate the advertising practices related to consumer financial practices, including overdraft. This data spans the past 15 years and includes advertisements sent to 3,716 American consumers, via direct mail, email, online, mobile phone, and print.

40 *See* Leslie Parrish, *Banks Target, Mislead Consumers As Overdraft Deadline Nears,* Center for Responsible Lending (Aug. 5, 2010), *available at* http://www.responsiblelending.org/overdraft-loans/research-analysis/Banks-Target-And-Mislead-Consumers-As-Overdraft-Dateline-Nears.pdf; Center for Responsible Lending Research Brief, *Banks Collect Opt-Ins Through Misleading Marketing* (Apr. 2011), *available at* http://www.responsiblelending.org/research-publication/banks-misleading-marketing.

41 Example obtained from Mintel Comperemedia database of marketing materials, on file with authors.

42 Agarwal, Chomsisengphet, Mahoney, & Stroebel, *Regulating Consumer Financial Products: Evidence from Credit Cards* (Sept. 30, 2013), *available at* http://pages.stern.nyu.edu/~jstroebe/research/pdf/CARD_Act.pdf (finding that overall cost of borrowing decreased following the CARD Act, with no evidence of an offsetting increase in interest charges or a reduction in access to credit); CFPB's most recent study on impact of the CARD Act, CFPB, *The Consumer Credit Card Market* (Dec. 2015), http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf (finding that the all-in costs of credit cards, which had declined substantially as of the Bureau's 2013 report, remained steady, and that the shift toward upfront pricing remained resilient).

B. Overdraft Fees Stifle Responsible, Helpful Products.

Unfettered overdraft fees also stifle development of more appropriate products, both in the checking account space and in the small dollar credit market. Those in defense of overdraft programs as appropriate products tend to note that the programs provide a means for consumers to deal with temporary shortfalls, even if they do incur many fees on an annual basis. Indeed, as noted earlier, many families experience income and expense volatility. But to say that today's overdraft programs are a poorly designed mechanism to address financial volatility is an understatement: It is difficult to imagine a worse "smoothing" product than one that charges an already struggling account holder a disproportionately high fee on every individual overdraft transaction and allows only a few days for repayment in full. But so long as financial institutions can charge $35 per loan, regardless of the size or duration of it, they lack incentive to cannibalize that revenue by developing or marketing other credit products that responsibly meet consumers' needs.

C. Despite Voluntary Reform Efforts, the Abusive Model Remains the Typical One.

Growing regulatory and private efforts have recognized the harms overdraft fees cause, and better models are springing up on a limited basis. In October of this year, the U.S. Department of Education prohibited overdraft fees on students' checking accounts, where the financial institution offering the account partners with an entity that handles the school's financial aid disbursement process.[43] And the Cities for Financial Empowerment Fund announced new standards for banks participating in private/public partnership Bank On initiatives to reach underserved communities that include no overdraft or NSF fees.[44] Some financial institutions that once charged overdraft fees on debit card transactions no longer do, and some have stopped posting transactions in order from high to low to drive up fees.[45] In addition, some financial institutions are exploring more responsible checking account models. For example, some very large banks are offering "safe" account models that do not carry overdraft or NSF fees.[46] They may carry a monthly fee, but this fee is relatively modest—a small fraction of a single overdraft fee—and predictable. These accounts may not offer paper checks, but they offer other ways to make payments, including to individuals. If electronic bill payments are made when the account lacks sufficient funds, they are declined, and the bank charges no fee. Recently, CFPB wrote letters to the 25 largest retail financial institutions urging them to offer and market such accounts.[47]

Though these are encouraging developments, the abusive overdraft model continues to dominate the checking account market. And it will likely continue to do so until unfair practices are reined in and a level playing field replaces the existing race to the bottom.

43 *See* http://www.ed.gov/news/press-releases/us-department-education-announces-two-final-regulations-protect-students-and-help-borrowers.

44 *See* http://www.joinbankon.org/#/resources#bank-on-national-account-standards.

45 Two examples are Bank of America, which no longer charges per-transaction overdraft fees on POS transactions, and HSBC, which no longer charges them on POS or ATM transactions.

46 Bank of America's SafeBalance (https://www.bankofamerica.com/deposits/safebalance-bank-account.go#footnote2); Key Bank Hassle Free Account (https://www.key.com/personal/checking/key-bank-hassle-free-account.jsp), Chase's prepaid card, Liquid (https://www.chase.com/content/dam/chasecom/en/debit-reloadable-cards/documents/chase_liquid_v6.pdf).

47 *See* http://www.consumerfinance.gov/newsroom/cfpb-takes-steps-to-improve-checking-account-access/.

POLICY RECOMMENDATIONS

The Consumer Financial Protection Bureau (CFPB) has been studying overdraft fee programs for several years. CFPB has published two reports that highlight overdraft abuses and conclude that concerns about overdraft practices that regulators have identified for years persist today. These concerns include that a significant segment of consumers incurs large numbers of overdraft fees and that even those with "moderate" overdraft usage may pay hundreds of dollars annually. As the CFPB considers how to address overdraft fee abuses, we urge that its regulations include a backstop against excessive fees that ensures that financial institutions will no longer be permitted to wreak financial havoc in the life of any account holder through overdraft practices.

A. Rein in Excessive Fees. The size of the overdraft fee is the engine that drives overdraft abuses. It bears virtually no relation to the cost to the institution of covering the overdraft. The Credit CARD Act required that penalty fees on credit cards, including fees for exceeding the card's credit limit, be reasonable and proportional to the "violation." The Federal Reserve (charged with writing consumer protection rules before the creation of the CFPB in 2010) determined that this requirement included that the fee must be reasonable and proportional relative to the cost to the institution, and that the fee could not exceed the size of the violation. In the overdraft context, where overdrafts cost the institution very little, this would mean the fee should be significantly less than the average fee today, and it should in no case exceed the size of the overdraft itself. Similarly, NSF fees are extraordinarily high in an era when processes are highly automated.

B. Stop the Onslaught. Limit overdraft fees to one fee per month and six per year, and prohibit predatory posting practices. Once an account has gone negative and the customer has incurred an overdraft fee, the customer should have sufficient time to bring the account back to positive before being charged additional fees. Again, the CARD Act limited over-the-limit fees to one per month, and the Federal Reserve determined in the credit card context that requiring "reasonable and proportional fees" meant that no more than one penalty fee of any kind could be charged per single event or transaction. The closest parallel to the typical "violation" in the credit card context is the monthly statement cycle. Account holders struggling to keep their account positive often do not have the capacity to pay multiple fees, and this practice causes them a harm they cannot reasonably avoid. Thus, CFPB should limit fees to one fee per month and six per year; prohibit "sustained" or "extended" fees; and prohibit posting practices that result in unnecessary overdrafts and fees.

C. Regulate Overdrafts, Particularly Non-Occasional/High-Frequency and any ATM Overdrafts, as Credit Subject to Ability to Repay Assessment and Repayment through Installments. Overdraft fees have long enjoyed a regulatory pass in many respects, because banks have posited that overdraft is not being used as credit but instead is merely an occasional courtesy. However, data showing that many consumers are charged many fees annually belies this argument. When financial institutions pay a customer's transactions when the account lacks sufficient funds—particularly when done regularly, routinely, and repeatedly—the financial institution is extending credit to that customer, and the product should be regulated as such. This means that it should only be extended based on a determination that the customer has the ability to repay it, and it should be repayable in manageable installments. ATM overdrafts, indistinguishable from pure cash loans, should also always be subject to credit protections.

APPENDIX: ANNUALIZED MARKET SIZE CALCULATION CHART

Institution Type	Reported Fee Income	Reported OD/ NSF Charges	Estimated OD/ NSF Charges	Estimated OD Charges
OD-Reporting Banks (Assets >$1B)	$31,230,009,000*	$11,178,407,000*	--	$9,054,180,000**
Non-OD-Reporting Banks (Assets <=$1B)	$3,361,007,000*	--	$2,083,824,300^	$1,687,897,683**
CUs (None report OD as separate line-item)	$7,333,000,000+	--	$3,739,830,000^^	$3,029,262,300**
Total, excluding sustained fees#	**$41,924,016,000**	**$17,002,061,300**		**$13,771,339,983**

OD = Overdraft revenue

NSF= Non-sufficient funds revenue

CU = Credit union

* Reported data for banks is per the 2015 FDIC Call Report data.

** These estimates rely upon a 81% share of OD/NSF charges deriving solely from OD, per CRL analysis of 2011 Lightspeed data. The CFPB's 2013 White Paper shows that 83% of transactions that exceeded the available balance are paid into overdraft, and 17% are rejected—but the report does not indicate whether a fee was charged on the overdraft transaction (CFPB White Paper at 26). The CFPB's 2014 Data Point breaks down overdraft and NSF fees, but this breakdown also includes sustained fees, a practice that is not uniformly practiced by banks (CFPB Data Point at 10, showing a 72%/19%/9% breakdown of Non-Sustained Overdraft/NSF/Sustained Overdraft, respectively). We exclude sustained fees from the Lightspeed calculation. In addition, both CFPB papers are based on data from the largest banks, whereas Lightspeed banks cover a wider range of sizes.

^ This estimate relies upon a 62% share of service charge income deriving from OD/NSF from the 2012 ICBA Overdraft survey, as cited by CFPB 2013 White Paper; since 82% of survey respondents had $500 million in assets or less, this is a particularly good estimate for banks at $1B or below.

+ At the time of this estimate, three quarters of data were available from the NCUA 2015 Call Report. We annualized the three-quarter total to arrive at a full-year total.

^^ This estimate relies upon a 51% share of CU service charge income deriving from OD/NSF, per Strunk Consultants as reported in CFPB 2013 White Paper.

Sustained OD fees are those assessed by some institutions for *maintaining* a negative balance, not in reference to a particular transaction. In 2013, the CFPB published a breakdown of these fees, finding that, for the 64% of their surveyed banks that charge sustained fees, 9.2% of total OD/NSF fees were sustained fees.

About the Center for Responsible Lending

The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

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