Consumer Affairs

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The Honorable Kathy Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

July 1, 2019

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

Dear Director Kraninger:

The Department of Consumer Affairs (DCA) protects and enhances the daily economic lives of New Yorkers to create thriving communities. Through our enforcement and education work, and through the work of our Office of Financial Empowerment (OFE), we seek to protect consumers in the marketplace and promote access to safe and affordable financial products.

OFE has a demonstrated commitment to advancing the financial health of the people we serve. Through the work of our financial counseling and coaching programs, including our Financial Empowerment Centers, we provide free one-on-one financial counseling to New Yorkers. In Calendar Year 2018 alone, our programs served over 8,500 clients. Since inception in 2008, these programs have helped New Yorkers reduce more than $65 million in debt and increase their savings by over $5.5 million.

We know from our work in the financial health space that New Yorkers struggle with unmanageable debt and a persistent lack of savings they can use to handle emergencies and plan for the future. Low and unsteady wages only exacerbate these challenges. We are always seeking ways to deepen our understanding of the ways that individuals deal with income volatility and cash flow shocks. To this end, we have held two recent convenings on the topic of credit – the first on connecting credit-invisible New Yorkers to credit-building opportunities, and the second on the promise and peril of credit as a financial health tool.

For many individuals with low incomes, overdraft acts as a form of short-term credit. However, it is the considered opinion of DCA that the harms of overdraft outweigh the minimal benefits, as we detail below. We therefore urge the Bureau, as part of its review of the Overdraft Rule consistent with the Regulatory Flexibility Act (RFA), to avoid any actions that would increase consumer uptake of overdraft offerings.

Despite the presence of the Bureau's Overdraft Rule, which requires banks to offer overdraft only to consumers who opt in to the overdraft feature, in 2017 America's largest banks (those with over $1 billion in assets) collected $11.5 billion in overdraft and non-sufficient funds fees from consumers, an increase of

$10 million over the previous year.[1] A 2018 report by the Center for Responsible Lending found that the fee per overdraft exceeds $30 at all of the nation's largest banks, and that some of these banks engage in abusive practices such as allowing five or more overdraft fees to be charged to a customer in a single day, and ordering transactions to maximize the likelihood of an overdraft.[2] These practices amount to a predatory effort to strip assets from consumers with low incomes and balances who are experiencing cash flow issues.

Meanwhile, the value to consumers of overdraft is questionable at best. Overdraft acts as an instant loan, allowing consumers to transact when their balances are low. However, the convenience of overdraft comes at a high price – and it is a price that many consumers pay frequently, draining their already scarce financial resources. According to the Bureau's own research, overdraft and non-sufficient funds fees for opted-in consumers average over $250 per year.[3] Only 8.3 percent of checking accounts experience ten or more overdrafts per year, yet this small percentage of users accounts for three fourths of all overdraft fees, overdrafting repeatedly, incurring costly fees, and risking their account standing.[4] A desire to avoid overdraft fees is the most-commonly cited reason for being unbanked, indicating that these fees are driving consumers to use alternative financial services that have fewer consumer protections.[5] Alternative financial services are a more appealing option when checking accounts at mainstream financial institutions prove so costly. No banking product should drive consumers to shadowy back-alley financial services.

It is no wonder, then, that a 2017 study by the Pew Charitable Trusts concluded that "overdraft does not meet the needs of most consumers" and that overdraft is a "costly, inefficient" form of credit.[6] Pew's research found that consumers do not understand that they have the right to opt out of overdraft and have transactions declined without a fee if their account lacks sufficient funds. This finding suggests that CFPB's current Overdraft Rule, relying as it does on an opt-in model, does not go far enough to ensure that consumers are making informed decisions, and does not do enough to protect consumers from high overdraft costs.

Researchers and policymakers in the financial health space have proposed common-sense policy changes that would limit the harmful effects of overdraft on consumer financial wellbeing. These include: enhancing the transparency of overdraft features; making overdraft fees proportional to either the overdraft amount or the financial institution's cost in providing the overdraft coverage; capping the number of overdraft fees allowed in a 12-month period; implementing a real time payment system; and

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[1] https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-unfair-market-overdraft-l-aug2018.pdf

[2] Ibid

[3] https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf

[4] https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2017/04/27001546/2017-Market-Size-Report_FINAL_4.pdf and https://www.brookings.edu/research/the-fastest-way-to-address-income-inequality-implement-a-real-time-payment-system/

[5] http://www.pewtrusts.org/~/media/assets/2016/06/fsp_what_do_consumers_without_bank_accounts_think_about_mobile_payments.pdf

[6] https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/overdraft-does-not-meet-the-needs-of-most-consumers

others.[7] Affordable small-dollar loans represent another sound alternative to expensive overdraft penalties, and have the added virtue of helping consumers build their credit.

We urge the Bureau to consider as part of its RFA review of the Overdraft Rule the robust research indicating that overdraft fees harm consumers and drive them out of the mainstream banking sector, and to consider ways to support the development of sound alternatives to overdraft. While the Bureau's concern for the viability of small financial institutions is understandable, this concern must not lead to a relaxing of existing overdraft protections in the name of enhancing small-bank profitability. Such a measure would stray from the Bureau's core mission to protect consumers in the financial marketplace.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Lorelei Salas
Commissioner

[7] See for example: https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/12/consumers-need-protection-from-excessive-overdraft-costs