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Re: Impact of overdraft programs on consumers

Docket Number: CFPB-2012-0007

June 26, 2012

Dear Director Cordray:

Consumer Action¹ will focus its comments on the concerns we hear from consumers who are hit with punitive overdraft fees.

Consumers need *blanket protection* from overdraft fees when they choose to opt-out of overdraft programs offered by their bank. Bank customers need to be able to rely on consistent, transparent, and comprehensive overdraft policies that provide real value. We also suggest that the CFPB ban banks from manipulating transactions to maximize fee income, as this deceptive practice often inflicts added costs on those who can least afford it.

Consumers report that they are being hit with overdraft (OD) fees even when they expressly choose to opt-out of overdraft coverage.

Many consumers are irritated and confused by the current overdraft law and expect more protection. Sarah from Chicago, IL thought she was protected from debit overdraft charges because she expressly told the bank that she would not opt-in when she opened a checking account. But an automatic \$30 withdrawal ended up overdrawing her account, costing \$120 in overdraft fees. Even if technically not covered by the opt-in provision, she thought she was protected since she affirmatively chose to prevent overdrafts from occurring.

¹ *Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and utilities. www.consumer-action.org*

Matt from Washington state says he was charged over \$200 (\$5 in “service fees” and \$32 in overdraft fees) because a new deposit hadn’t posted and an automated payment went through and overdrew his account by \$2.

If a consumer decides to avoid overdraft fees by opting-out, her bank should be required to honor that decision *no matter what form the debit takes*: whether they use a debit card at a register, ATM, automated payment, online bill pay, etc.

Account re-ordering

For instance, Steve from Tuscon, AZ complained that he had “opted out of overdraft” But Steve believes that his bank in March “manipulated the order” of his daily debits, resulting in \$140 in OD fees. This consumer argues that since his recurring monthly fitness membership debits are not subject to the opt-in provision, the bank re-submitted his monthly charge five times in one day. The consumer had made a recent deposit, which had not cleared. While the system kept rejecting the health club charge because there was no overdraft option, he says, the bank put through the debit transactions he had made to purchase gasoline. By the time the fitness debit cleared, he had been charged over \$140 in “insufficient funds” fees. While the bank denied any wrongdoing, Steve fought the charges and ultimately received a refund from the bank.

Consumers should be able to rely on a bank to process their transactions in a manner that would result in the smallest set of fees possible—not from largest to smallest to maximize overdraft fees. Consumer Federation of America (CFA) released a bank overdraft fee survey earlier this month² that details how some banks are now processing transactions from smallest to largest, chronologically or both. Financial institutions have the capability to process consumer transactions in a manner that is advantageous to its customers and should be required to do so.

Available balances

Consumer Action has received complaints from cardholders who say it is very confusing to know what their available balance is. Kim from North Carolina lives on a limited income of \$1,200 a month. She got hit with \$175 in overdraft fees because she could not determine her available balance.

Harry from Georgia contacted us after receiving six overdraft fees at \$35 each (\$210). Harry had opted-in to protect himself from any accidental overages or delays in processing deposits. Harry pays \$9.95 per month for overdraft protection and receives overdraft coverage for only *up to \$50* in overages. The bank’s current policy is to charge \$10 per day for those who pay \$9.95 per month and \$28 per transaction once you surpass the \$50 cushion.

² www.consumerfed.org/pdfs/Studies.CFAOverdraftSurveyUpdateJune2012.pdf

When last Veteran's Day holiday delayed his direct deposit, causing an overdraft, Harry contends that the bank should have stopped any debit that surpassed his \$50 limit.

Blanket protection

Consumers need clear information as to what overdraft protection provides and how they can rely on it to reduce fees—not to enrich the bank for a service of dubious value. Overdraft policies ought to be consistent, transparent, comprehensive and voluntary. If the consumer opts for coverage, it should prevent *all* overdrafts and overdraft fees in return for a fair and reasonable, single transaction fee at the time the overdraft protection is needed. According to the CFA survey, nearly two thirds of banks impose multiple fees if consumers do not repay an overdraft immediately. Consumer Action urges the CFPB to ban additional OD fees for the same overdraft within the same month. Optional Overdraft coverage that meets these criteria can be a useful consumer service.

Banks must be required to alert consumers in real time of impending overdrafts (where technically feasible) so that they can consider their alternatives *before* costs and fees are imposed. Account transactions must always be processed in the way that results in the least cost to customers.

Penalty box

The CFPB's proposed penalty box on checking account statements is an excellent tool that underscores the high cost of overdraft fees and helps consumers learn about potential punitive fees. We support the proposed version with bold numbers on the front of the account statement, summary information and notice of three simple steps to lower fees. But however helpful this tool may be, it is no substitute for strong rules and adequate enforcement to ensure that consumers are not placed at a financial disadvantage.

Thank you for reviewing Consumer Action's recommendations and the concerns of consumers across the nation.

Sincerely

Ruth Susswein

Deputy Director, National Priorities