February 16, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Submitted via regulations.gov

Re: Comment on proposed change to overdraft policy, RIN 3133-AF20

Dear Ms. Ausbrooks:

The **Center for Responsible Lending (CRL)**, **Self-Help Federal Credit Union**, and **Self-Help Credit Union**, **along with the undersigned consumer, civil rights, faith and community organizations,** write to oppose the proposed change to the National Credit Union Administration (NCUA)'s overdraft policy.[1]

For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 185,000 mostly low-income families through 65 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington and Wisconsin.

Over the past 18 years, Self-Help has merged with 24 credit unions and acquired two failed banks. All of these institutions primarily served low- and moderate-income communities. All but a handful operated high-cost overdraft programs prior to the merger. Self-Help phased out those overdraft programs within six months following the merger and received virtually no complaints. Our experience is that low-income consumers do not want overdraft programs, such that expanding them for credit union members is not a true benefit to those members.

NCUA's proposal, which would permit federal credit unions (FCUs) to keep members' negative account balances open for longer than the current limit of 45 days, offers no evidence that it will achieve its stated goal -- to provide relief to FCU members. At the same time, the proposal fails to consider the significant risks it poses members or include elements to mitigate those risks.

Credit union overdraft practices, like those of banks, most heavily impact the financially vulnerable and leave them worse off. During the best of times, any NCUA action related to overdraft practices should provide a net benefit to FCU members. During a health and economic crisis, it's only more important that the agency take a do-no-harm approach. Instead, this proposal undermines and contradicts federal relief efforts.

To avoid causing net harm to members, any final rule must prohibit additional overdrafts, overdraft fees, and non-sufficient funds (NSF) fees during the period beyond 45 days. More generally, the Board

[1] NCUA, Proposed Rule, Overdraft Policy, 86 Fed. Reg. 3876 (Jan. 15, 2021).

should use its broad authority to provide meaningful relief from harmful credit union overdraft practices during the pandemic and beyond.

1. **The proposal presents no evidence that it will achieve its stated goal -- relief to members.**

The stated goal of this proposal is to enable credit unions "to provide relief to their members" in light of the impacts of COVID-19.[2] But the proposal presents no evidence that suggests that it will accomplish this goal. It makes general statements like that the current policy is "overly prescriptive" and "potentially harmful" and that the proposal will enable federal credit members "flexibility" to cope with the current crisis.[3] It provides no evidence, though, that extended negative balances are more common now than prior to the pandemic -- whether, for example, more overdrawn accounts are staying negative for 45 days, or whether more accounts are being charged-off at the 45-day point.

2. **The proposal fails to consider the substantial risks it poses members.**

At the same time the proposal presents no evidence of its purported benefit, it fails to wrestle with or even acknowledge the substantial risks it poses to credit union members.

By extending the time period for negative balance resolution beyond 45 days, the proposal would expose members to additional overdrafts, overdraft fees, and non-sufficient funds fees during the extended period. These overdraft fees include "sustained," "extended," or "continuous" overdraft fees that some credit unions charge when an account remains negative (e.g., one sustained overdraft fee per day once the account has been negative for more than five days). Additional overdrafts and fees assessed after the 45-day period will only increase members' debt burden and exacerbate their financial distress.

In addition, extending the resolution period would extend the period during which the credit union maintains an effective super-lien position to collect from members' incoming deposits. One hallmark dysfunction of today's overdraft programs is that the financial institution repays itself the entire negative balance (the overdrafts plus the outsized fees) 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. This proposal increases the likelihood that the credit union will seize significant portions of incoming funds for repayment of negative balances, much of which typically consist of outsized overdraft fees. These incoming deposits could include delayed or future stimulus or COVID relief payments, unemployment payments, and especially this time of year, tax refunds, including earned income tax credit payments.

The impact of exposing members to additional overdraft fees is profound. Credit union overdraft fees average about $30 each,[4] 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 rather than charge any fee at all.[5]

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[2] 86 Fed. Reg. 3877.
[3] 86 Fed. Reg. 877.
[4] *Id.* at 52.
[5] Rebecca Borné & Peter Smith, The State of Lending in America & its Impact on U.S. Households at 3, Center for Responsible Lending (July 2013), https://www.responsiblelending.org/sites/default/files/uploads/8-overdrafts.pdf

The vast majority of overdraft fees are paid by a relatively small portion of members least able to shoulder them. At one credit union that merged into Self-Help, out of roughly 10,000 members, 60 members were charged between 50 and 214 overdraft fees in one year. The fee was $29 each, meaning these 60 members paid between $1,450 and $6,200 each.

African Americans and Latinos are disproportionately harmed by overdraft fees. Across the entire U.S. population, 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 consumers with checking accounts, African Americans and Latinos pay far more than a representative share of the fees.

The proposal fails to consider any of the above. This is especially disappointing given that these risks were presented to the Board by several of the undersigned organizations[8] and by Board Member, now Chairman, Harper,[9] when the initial interim final rule was voted down in May 2020.

3. The proposal undermines and contradicts federal relief efforts and initiatives.

Since the onset of the pandemic, the federal government has taken unprecedented steps to provide relief to consumers, including multiple rounds of stimulus payments and expanded unemployment benefits. This proposal would enable federal credit unions to siphon off that relief in the form of additional overdraft and non-sufficient funds fees.

The federal financial regulators have also issued multiple guidances appropriately encouraging depositories to work with customers dealing with the impacts of the COVID-19 crisis by, among other actions, providing loan modifications[10] and relief from overdraft fees.[11] This proposal, by enabling additional punitive fees, is contradictory to those guidances.

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[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 14 percent of African American and 12 percent of Latino households are unbanked, compared to 2.5 percent of white households. 2019 FDIC Survey: How America Banks: Household Use of Banking and Financial Services, Executive Summary at 2, *available at* https://economicinclusion.gov/downloads/2019_FDIC_Unbanked_HH_Survey_ExecSumm.pdf.

[8] Letter to NCUA Board Members from the Center for Responsible Lending, Self-Help Federal Credit Union, Self-Help Credit Union, and the National Consumer Law Center (June 10, 2020), https://www.responsiblelending.org/research-publication/concerns-ncua-interim-final-rule-overdraft-policy.

[9] NCUA Board Member Todd M. Harper Statement on the Interim Final Rule on Overdrafts, As Prepared for Delivery on May 21, 2020, https://www.ncua.gov/newsroom/speech/2020/ncua-board-member-todd-m-harper-statement-interim-final-rule-overdrafts.

[10] Federal Reserve, FDIC, NCUA, OCC, and CFPB, Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) (April 7, 2020), https://www.fdic.gov/news/press-releases/2020/pr20049a.pdf.

[11] Federal Reserve, FDIC, and OCC, CA 20-10: Community Reinvestment Act (CRA) Consideration for Activities in Response to the Coronavirus (May 2020), https://www.federalreserve.gov/supervisionreg/caletters/CA%2020-10%20Attachment%20CRA%20Consideration%20for%20Activities%20in%20Response%20to%20COVID-19%20FAQs%20-%20Final.pdf.

In January, President Biden ordered agencies to review any questions of fact, law and policy implicated by rules, including proposed rules, that have not yet taken effect.[12] NCUA's proposal clearly raises significant questions of fact and policy given it provides no evidence of its purported benefit and fails to consider the harms it could inflict.

This proposal also contradicts the Biden Administration's policy on advancing racial equity, which orders that "each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups."[13] This proposal fails to consider that it will likely increase overdraft and NSF fees, which disproportionately harm communities of color, as noted above. The agency should only move forward with any rule addressing overdraft practices after complying with this executive order.

4. **If NCUA moves forward with this proposal, it should prohibit additional overdrafts and additional overdraft and non-sufficient funds (NSF) fees during the period beyond 45 days.**

As noted above, NCUA has offered no evidence to support that this proposal will actually help members. Instead of proposing to extend the 45-day period, NCUA should be encouraging credit unions to offer members an amortizing loan to clear their negative balance -- clearly in the better interest of the member -- sooner rather than later. Indeed, the proposal notes that "it is imperative that FCUs have the flexibility to work with their members to take positive and proactive actions that can manage or mitigate adverse impacts on members while maintaining safe-and-sound operations."[14] Yet the proposal suggests no particular offers of flexibility beyond holding the account open and exposing members to additional fees and seizures of funds.

Should the Board proceed nonetheless, the rule -- in order to avoid inflicting affirmative harm on FCU members -- must prohibit additional overdrafts and additional overdraft and non-sufficient funds (NSF) fees during the period beyond 45 days to ensure that this proposal does not increase the burden on members.

5. **NCUA should instead be providing meaningful relief from overdraft fees during this crisis and beyond.**

NCUA has the opportunity to provide meaningful relief to FCU members during this crisis and beyond. As the proposal notes, the Board has broad authority under the Federal Credit Union Act to "prescribe rules and regulations for the administration of the Act."[15] Its current overdraft regulations, including the one it now proposes to amend, already establish certain requirements credit unions must follow with respect to their overdraft programs.[16]

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[12] Memorandum for the Heads of Executive Departments and Agencies, From Ronald A. Klain, Assistant to the President and Chief of Staff, Re: Regulatory Freeze Pending Review (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/.
[13] Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Jan. 20, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.
[14] 86 Fed. Reg. 3878.
[15] 86 Fed. Reg. 3877.
[16] *Id.* at 3878.

As we have said many times before, 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."[17] 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.[18]

The Consumer Financial Protection Bureau's research on overdraft practices has shed further light on the profound impact they have on many consumers. Its studies of several banks' transactional data found:

- 80% of overdraft fees are paid by those with average account balances of less than $350;[19]
- Median annual deposits for those charged many fees each year range from approximately $27,000-$31,000;[20]
- Overdraft fees hit hardest those with deep subprime credit scores, in the 563-585 range;[21]
- The average overdraft-related fees paid by accounts with at least one overdraft was $225 in 2011 across the banks studied;[22]
- For one group of hard-hit consumers, the median number of overdraft fees was 37, nearly $1,300 annually, meaning some pay much more;[23]
- Involuntary account closure rates were 2.5 times as high for consumers subjected to overdraft fees on debit card transactions than those not.[24]

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 that credit unions:

- 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;
- adhere to a meaningful limit on the number of fees charged per month and per year. The FDIC's 2010 guidance advises that its supervisee banks charge no more than six overdraft fees in a rolling twelve months;[25] and

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[17] 12 U.S.C. § 1752(1).

[18] *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.

[19] *CFPB 2014 Data Point* at 12, Table 3; *see also CFPB 2017 Data Point* at 16, Table 2.

[20] *CFPB 2017 Data Point* at 16, Table 2.

[21] *Id.*

[22] *CFPB 2013 White Paper* at 5.

[23] *CFPB 2014 Data Point* at 12, Table 3; *see also CFPB Data Point: Frequent overdrafters* at 16, Table 2 (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf [*CFPB 2017 Data Point*].

[24] *CFPB 2013 White Paper* at 34.

[25] FDIC Overdraft Payment Program Supervisory Guidance, FIL-81-2010 (2010), https://www.fdic.gov/news/financial-institution-letters/2010/fil10081.pdf.

- cease collecting repayment of negative balances through a single balloon payment from the next incoming deposit, even before the 45-day point.

We attach for your reference the Center for Responsible Lending's recent report on overdraft practices released early during the COVID crisis.[26] 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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Additional Consumer, Civil Rights, Faith and Community Organizations
Alaska PIRG
Americans for Financial Reform Education Fund
Arizona PIRG Education Fund
Arkansans Against Abusive Payday Lending
Better Markets
California Reinvestment Coalition
Center for Economic Integrity (AZ)
Community Legal Services, Inc. of Philadelphia
Consumer Action
Consumer Federation of California
Consumers for Auto Reliability and Safety
Delaware Community Reinvestment Action Council, Inc.

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[26] Peter Smith, et al., *Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis*, Center for Responsible Lending (June 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-overdraft-covid19-jun2019.pdf.

Empire Justice Center (NY)
Faith in Action National Network
The Indiana Assets & Opportunities Network
Maryland Consumer Rights Coalition
Missouri Faith Voices
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
New Jersey Citizen Action
THE ONE LESS FOUNDATION (PA and CO)
Progressive Leadership Alliance of Nevada
Public Good Law Center
Public Law Center (CA)
RAISE Texas
S.C. Appleseed Legal Justice Center
Texas Appleseed
Tzedek DC
U.S. PIRG
Virginia Citizens Consumer Council
Wheeler Advisory Group (CO)
Wildfire: Igniting Community Action to End Poverty in Arizona
Woodstock Institute

Center for Responsible Lending

OVERDRAFT FEES

Banks Must Stop Gouging Consumers During the COVID-19 Crisis

Peter Smith, Senior Researcher
Shezal Babar, Research Intern
Rebecca Borné, Senior Policy Counsel

June 2020

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Executive Summary

A review of 2019 data shows that big banks continue to collect over $11 billion in overdraft-related fees each year. Banks engage in a number of abusive practices that combine to drain massive sums from their customers' checking accounts. The large majority of these fees are shouldered by banks' most vulnerable customers, often driving them out of the banking system altogether. Bank overdraft fees cause particular harm to low-income consumers and communities of color, who are already disproportionately excluded from the banking mainstream.

Bank overdraft practices cause many families severe financial distress in the best of times. During the economic crisis caused by COVID-19, the devastating impact of overdraft fees will be only more pronounced.

This report analyzes the 2019 overdraft-related revenue of banks with assets of $1 billion or more and reviews the overdraft practices of the 10 largest banks in the United States, as well as how they report handling overdraft fees during the COVID-19 crisis. As of mid-May, none of the 10 largest banks has committed to providing sustained relief from overdraft fees during the crisis.

Bank overdraft practices cause many families severe financial distress in the best of times. During the economic crisis caused by COVID-19, the devastating impact of overdraft fees will be only more pronounced. Congress, federal regulators, state regulators, and banks themselves should all ensure overdraft fees are suspended during the crisis—an outcome supported by over three-fourths of Americans polled in April 2020, including 84% of Democrats, 76% of Republicans, and 68% of independents.

Banks Combine a Number of Unreasonable Practices to Deplete Families' Funds through Overdraft Fees

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. Financial institutions engage in a number of practices that each contribute to the extremely punishing impact overdraft fees have on banks' customers. Throughout this paper, we typically refer to "banks" and "bank practices"; we note, however, that many credit unions engage in many of the same abusive overdraft fee practices.

How banks harm their customers' financial health through overdraft practices:

- Unreasonably high fee per overdraft transaction. The typical overdraft fee is $35,[1] and it is this high despite several factors that indicate that any cost to the customer of overdrafting should be very small:
  - First, the most common transactions that cause an overdraft are debit card transactions, and these overdrafts average only $20 each—far smaller than the fee itself.[2]
  - Second, the risk to the bank of covering an overdraft is very low.[3] The bank is first in line for repayment—it takes the funds, plus the fee, directly from the customer's next incoming deposit, which occurs an average of only three days after the overdraft.[4] Thus, the bank is very likely to be repaid and will typically have its own funds outstanding for only a very short time.
  - Third, the cost to the bank of processing an overdraft transaction, particularly in today's highly automated environment, is very low.

- Multiple fees per day. Banks will typically charge multiple fees per day. Even banks that "limit" the number of fees per day set that limit at three to six per day, adding up to $105–$210 in a single day.

- "Extended" or "sustained" overdraft fees. Many banks charge an *additional* overdraft fee when their customer does not bring the account balance back to positive within a prescribed period of time. These fees embody the notion of kicking a person when they are down and only make it more difficult for a struggling account holder to recover.

- Opaque and often manipulative practices involving deposit clearing, debit holds, and transaction posting order. Frequently, customers incur overdraft fees despite carefully attempting to avoid them, and often believing they have. One practice in particular has garnered increased attention recently: charging overdraft fees on debit card transactions that were authorized when the consumer had sufficient funds in the account but then settled, often a few days later, when the account no longer had sufficient funds. The Federal Reserve has recently cited this practice as an unfair practice,[5] and the Consumer Financial Protection Bureau (CFPB) has highlighted this practice with concern.[6] But many banks continue to employ it. In addition, banks have notoriously re-ordered transactions to drive up the number of overdraft fees incurred; if larger balances are posted first, the account is depleted more quickly, resulting in more transactions for which the bank charges overdraft fees.

- Overdraft fees on debit card purchases and ATM withdrawals. Historically, debit cards—unlike credit cards—were not intended to put consumers in debt. When an account lacked sufficient funds, the debit card transaction was simply declined at no charge, similar to how credit cards are declined today when a customer has reached the credit limit. But with the help of software consultants pushing new overdraft programs on a contingency fee basis, banks began paying overdraft transactions on debit cards and charging a high fee for each one. Debit card transactions quickly became the most common cause of overdraft fees and remain so today. Some banks do not charge overdraft fees on debit card purchases, citing the best interest of their customers, but many do. The Federal Reserve's 2010 "opt-in rule" for debit card overdraft fees left unaddressed most of fundamental problems with overdraft fee programs.[7]

- Banks' super-lien position puts their customers' essential needs at risk. Banks repay themselves the negative balance amount and all the fees they have imposed from their customer's next incoming deposit, whether that is a paycheck, Social Security, unemployment, military/veterans compensation, or other public benefits. Banks in effect "jump the line" ahead of other essential expenses or debts the consumer has. This practice can leave consumers with little to pay for their essential needs. It also prioritizes the account holding bank ahead of a consumer's other creditors.

These practices combine to stack the deck against bank customers already struggling to get by and can make it impossible for those living paycheck to paycheck to know whether or not they've escaped the harsh blow of one, or many, overdraft fees.[8]

Vulnerable Households are Hardest Hit by Banks' Overdraft Practices

Banks' overdraft practices cause devastating, lasting harm to the customers whose financial health banks should be supporting. Nine percent of account holders pay 84% of the billions paid annually in these fees, and these consumers tend to carry low balances—averaging less than $350—and have relatively low monthly deposits.[9] For one group of hard-hit consumers, the median number of overdraft fees was 37, nearly $1,300 annually, meaning some pay much more.

Stacy,[10] a single mother of three from Connecticut, is among those hardest hit. She describes overdraft fees as "one of the most difficult and challenging parts of my life." She recalls a time she was working at JC Penney, struggling to cover rent and groceries. She got hit with two overdraft fees, totaling $60 or $70 in one week. Another time, it was three in one day. "So, the banks became who I worked for," she describes. "At one point I ended up making cloth diapers for my children out of t-shirts and an old sweater for liners, not because I wanted to but because I had no choice. It felt like the banks legally stole my money." She estimates she has paid over $2,500 in overdraft fees. She has lost her checking account, has been reported to the checking account blacklist Chexsystems, and has suffered from depression she attributes to bank overdraft practices.

Stacy is not alone. At one credit union of around 10,000 members, 60 members were charged between 50 and 214 overdraft fees in one year. Assuming conservatively a fee size of $20, that's between $1,000 and $4,280.

Many hit by relentless overdraft fees end up having their checking account closed,[11] and reentry is difficult.[12] African Americans and Latinos—already four to five times more likely to be unbanked than white Americans[13]—are disproportionately harmed by ejection from the financial mainstream.[14] Overdraft fees exacerbate mental health challenges as well.[15]

Bank Overdraft Programs Fuel a Dysfunctional Checking Account Market

Thanks to bank overdraft programs, consumers have been navigating a severely dysfunctional checking account market for at least the last 20 years. When consumers shop for a bank account, they likely consider factors such as fixed monthly and annual costs of 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 for an account with a modest monthly fee but more responsible overdraft fee practices. Thus, overdraft charges operate as "back-end" or "gotcha" fees that undermine consumer choice and a healthy market and fuel aggressive marketing efforts to convince people to "opt-in" to debit card overdraft, rather than transparent upfront price tags.

Banks, for their part, hesitate to step out of their entrenched abusive overdraft practices. Forgoing overdraft fee income—which typically ranges from a significant to an extraordinarily significant portion of banks' overall fee income—may mean charging fees on checking accounts they have touted as "free," or in the case of the largest banks, falling behind their peers and disappointing investors.

The COVID-19 Crisis Raises the Stakes and Calls for Long Overdue Regulatory Protections

Overdraft fees could balloon exponentially as a result of the COVID-19 crisis. Periods of under- and unemployment could cause unprecedented financial strain, potentially leading to unprecedented volumes of overdrafts. These fees will make many families' already desperate financial situations only more dire.

The impact of the crisis on Americans' financial lives is monumental. Unemployment and underemployment have skyrocketed, and communities of color have been hit particularly hard. According to the Bureau of Labor Statistics, unemployment reached 14.7% in April, the highest unemployment rate and the "largest single-month change in the history of the series, which began in 1948."[16] The unemployment rate in April 2020 was 14.2% for white people, 16.7% for Black people, and 18.9% for Latinx people.[17]

According to a recent nationwide survey conducted by Lake Research Partners and Chesapeake Beach Consulting in mid-April 2020,[18] 20% of Americans report that they have been laid off or furloughed, 24% report that their hours have been reduced, and 12% report that they are taking unpaid time off. Only 15% of Americans report their work life has not changed.[19] And while almost a quarter (23%) of white respondents report that they have had their hours reduced, more than one in three Black respondents (36%) and over a quarter (26%) of Latinx respondents say the same.[20]

According to the same poll, two in five Americans (40%) report a decrease in household monthly income since the onset of the COVID-90 crisis, with 17% reporting it has decreased significantly.[21] As the crisis impacts their finances, many families are carrying balances on their credit cards, taking money out of savings accounts, and delaying payments.[22]

Overdraft fees will only compound these burdens and drive financial stability for affected households further out of reach.

As of mid-May, overdraft fee relief during the crisis provided by the 10 largest banks has been disappointing. Most of these banks are providing a temporary credit of a customer's negative balance if the account balance is negative upon receipt of a stimulus payment.[23] As a result, these negative balances—typically the total of overdrawn amounts plus overdraft fees—will not be immediately deducted from a customer's stimulus check. At some later time, however—the typical period appears to be 30 days later—this temporary credit is expected to be reversed, and the customer's account balance will be reduced by the amount of the original negative balance. At least two of these banks are refunding overdraft fees incurred in the weeks leading up to receipt of the stimulus checks, but this practice does not appear typical.[24] Most or all of these banks have said that customers should contact them to request waivers. But none of these banks appear to have committed to suspending overdraft fees during the crisis, or even to reducing the size of the fee or the maximum number of fees the bank will charge. CRL will continue to track bank and regulatory actions related to overdraft fees during the crisis and periodically update that information on our website.

Policy Recommendations During the COVID-19 Crisis

Legislators, regulators, and banks should all be taking steps to relieve households from overdraft fees during this crisis. Depositories need not reject transactions when they eliminate overdraft fees. They can cover overdrafts at no charge—so long as another deposit is incoming, the bank should recover the loan amount—or with reasonably priced lines of credit, as was customary before overdraft fees became the cash cow they are today.

During this time of crisis, the U.K. financial regulator began requiring banks to provide up to £500 in overdraft funds, at no cost, for a period of 90 days beginning in April.[25] This follows the U.K. regulator's 2019 action to eliminate outsized overdraft fees, requiring that banks charge only periodic interest for overdrafts.[26]

More than three-fourths (77%) of Americans polled in April 2020 support elimination of overdraft fees during the financial crisis, with 51% strongly supporting. Support was also strong across parties, with 84% of Democrats, 76% of Republicans, and 68% of independents supporting.[27]

The following steps should be taken in the United States:

- Congress should include legislation in the next relief package prohibiting overdraft fees during the crisis, as proposed by New Jersey Senator Cory Booker and Ohio Senator Sherrod Brown.[28]
- The federal banking regulators (Office of the Comptroller of the Currency [OCC], FDIC, Federal Reserve, and National Credit Union Administration [NCUA]) should order the depositories they supervise to stop charging overdraft fees during the crisis. Thus far, they have encouraged some overdraft relief but have fallen far short of making relief mandatory.[29] One approach would be for regulators to condition the various privileges banks enjoy on banks' providing their customers relief from overdraft fees. During the COVID-19 crisis, these privileges have been expanded; for example, banks are currently able to borrow from the Federal Reserve at 0%,[30] and the Federal Reserve has waived fees on banks' intraday overdraft credit lines with the agency.[31]
- CFPB should issue a rulemaking deeming it an unfair and abusive practice to charge overdraft fees—or at least overdraft fees unlimited in number and amount—during a sweeping economic crisis. The CFPB has conducted thorough research on overdraft practices and concluded that concerns that regulators have identified for years persist today.[32] Yet under current leadership, the Bureau has done nothing to significantly address these concerns. To leave consumers wholly vulnerable to overdraft business-as-usual at a time like this is a stark betrayal of the agency's mission.
- State regulators should order the state-chartered banks they supervise to stop charging overdraft fees during the crisis, as the New York Department of Financial Services did with respect to bank customers experiencing hardship in March.[33]
- As a more modest step, any of the above could impose more limited moratoria following distribution of stimulus checks—say, 30 or 60 days—to protect stimulus funds from going directly to banks.
- Banks and credit unions should do the right thing.[34] Some banks, like Ally Bank and Prudential Bank of Philadelphia, have stopped charging overdraft fees. Others have encouraged customers to seek waivers, but this is clearly inadequate. As a start, the largest banks could agree among each other to stop overdraft fees during the crisis, leveling the playing field through cooperative market action.

Analysis of 2019 Overdraft Fee Data and Market Scan

CRL has analyzed market and consumer data for over 15 years to better understand how bank overdraft programs operate and how those programs impact family finances. The most recent release, 2018's *Unfair Market,* tracked the volume of fees from large banks and the policies and practices of the 10 largest banks in the United States. This report updates those findings.

FDIC Call Report Data Show Overdraft-Related Fees by Large Banks still Hovering above $11 Billion Annually

This report summarizes data disclosed by 658 financial institutions required to report overdraft-related fee revenue as part of their quarterly FDIC Call Reports. FDIC Call Report data were accessed for the period ending December 31, 2019, covering fees reported for the 2019 calendar year. The analysis aggregates each institution's assets, deposit volumes, total income (including both interest and non-interest income), service charge income (which includes overdraft and NSF fee income), and overdraft and NSF fee income. Each of these statistics is shown in an exhibit, totaled for all US banks, all banks required to report overdraft fee revenue, and both aggregated and independently for the top 20 fee-charging banks (Figure 2). Fee volumes are also normalized as percentages of non-interest income and service charge income, showing the interaction among the variables.

In 2019, according to FDIC Call Reports, banks with assets of $1 billion or more charged customers $11.68 billion in overdraft-related fees (which include overdraft fees and non-sufficient funds [NSF] fees),[35] an increase of $130 million over the 2018 total. While this total is an important marker and represents the best publicly-available information, it does not represent total nationwide fee volume, as all credit unions and the many banks under $1 billion in assets are not required to report this revenue to the FDIC.

Figure 1: Aggregate Overdraft and NSF Fee Volume since 2015

Year	Overdraft/NSF Revenue among All Reporting Banks	Change since 2015	Overdraft/NSF Revenue among the Top 20 Fee-Charging Banks	Overdraft/NSF Revenue as a % of Non-interest Income among All Reporting Banks
2015	$11.18 billion	0	$8.66 billion	5.0%
2016	$11.44 billion	+2.3%	$8.99 billion	5.1%
2017	$11.45 billion	+2.4%	$9.00 billion	5.0%
2018	$11.55 billion	+3.3%	$8.98 billion	4.6%
2019	$11.68 billion	+4.5%	$9.20 billion	5.0%

As shown above in Figure 1, overall overdraft and NSF fee volume has grown each year since Call Report data have tracked it, and grew more last year than it did in the prior year. While overdraft and NSF fee revenue shrank slightly among the top 20 fee-charging banks, and overdraft and NSF fees made up a smaller proportion of reporting banks' non-interest income in 2018, the proportion returned to 5% in 2019, and the overall picture is of a persistent sizable drain on consumer finances.

Figure 2: Top 20 Banks by 2019 Overdraft/NSF Fee Income, Dollar Amounts in Thousands

Rank	Bank Name	Assets	Deposits	Total Income	Interest Income	Non-Interest Income (NII)	Service Charge Income (SCI)	OD/NSF Fee Income	OD/NSF Fee Income as % of NII	OD/NSF Fee Income as % of SCI
1	JPMORGAN CHASE BANK, NATIONAL ASSOCIATION	$2,337,646,000	$1,354,431,000	$122,476,000	$75,935,000	$46,541,000	$5,121,000	$2,061,000	4.4%	40.2%
2	WELLS FARGO BANK, NATIONAL ASSOCIATION	$1,712,919,000	$1,326,735,000	$85,832,000	$60,377,000	$25,455,000	$5,201,000	$1,696,000	6.7%	32.6%
3	BANK OF AMERICA, NATIONAL ASSOCIATION	$1,852,983,000	$1,402,827,000	$82,825,000	$59,651,000	$23,174,000	$5,423,000	$1,563,000	6.7%	28.8%
4	TD BANK, N.A.	$320,471,996	$273,605,010	$11,344,394	$9,645,586	$1,698,808	$1,196,352	$565,237	33.3%	47.2%
5	U.S. BANK NATIONAL ASSOCIATION	$486,004,220	$346,975,331	$26,803,804	$17,374,890	$9,428,914	$1,338,670	$476,426	5.1%	35.6%
6	PNC BANK, NATIONAL ASSOCIATION	$397,703,264	$282,520,917	$19,790,506	$13,648,925	$6,141,581	$1,320,604	$411,891	6.7%	31.2%
7	REGIONS BANK	$125,641,000	$99,836,000	$6,691,000	$4,582,000	$2,109,000	$754,000	$373,000	17.7%	49.5%
8	TRUIST BANK	$461,256,000	$347,458,000	$13,361,000	$8,574,000	$4,787,000	$763,000	$322,000	6.7%	42.2%
9	USAA FEDERAL SAVINGS BANK	$88,795,582	$77,730,624	$6,805,277	$4,312,048	$2,493,229	$241,458	$215,338	8.6%	89.2%
10	CITIZENS BANK, NATIONAL ASSOCIATION	$165,742,416	$126,691,001	$7,959,116	$6,195,294	$1,763,822	$493,211	$214,337	12.2%	43.5%
11	WOODFOREST NATIONAL BANK	$6,444,845	$5,787,372	$738,045	$250,089	$487,956	$245,554	$155,399	31.8%	63.3%
12	CAPITAL ONE, NATIONAL ASSOCIATION	$328,999,040	$256,824,511	$20,502,296	$14,133,327	$6,368,969	$312,306	$154,133	2.4%	49.4%
13	KEYBANK NATIONAL ASSOCIATION	$143,390,269	$115,815,086	$7,159,802	$5,203,391	$1,956,411	$337,206	$148,600	7.6%	44.1%
14	HUNTINGTON NATIONAL BANK, THE	$108,739,378	$85,669,173	$5,582,602	$4,219,747	$1,362,855	$340,202	$146,182	10.7%	43.0%
15	BBVA USA	$92,657,948	$75,309,801	$4,322,708	$3,517,297	$805,411	$251,325	$127,824	15.9%	50.9%
16	FIFTH THIRD BANK, NATIONAL ASSOCIATION	$167,845,100	$132,165,535	$9,565,152	$6,218,612	$3,346,540	$574,905	$126,612	3.8%	22.0%
17	MANUFACTURERS AND TRADERS TRUST COMPANY	$119,432,105	$94,734,819	$6,492,269	$4,869,698	$1,622,571	$331,510	$126,143	7.8%	38.1%
18	FIRST NATIONAL BANK TEXAS DBA FIRST CONVENIENCE BANK	$2,179,218	$1,745,387	$362,831	$66,394	$296,437	$152,050	$112,735	38.0%	74.1%
19	CITIBANK, N.A.	$1,453,998,000	$536,115,000	$74,139,000	$59,379,000	$14,760,000	$994,000	$109,000	0.7%	11.0%
20	TCF NATIONAL BANK	$46,627,366	$34,662,223	$2,051,877	$1,587,249	$464,628	$142,535	$99,220	21.4%	69.6%
	Top 20 Banks	$10,419,475,747	$6,977,638,790	$514,804,679	$359,740,547	$155,064,132	$25,533,888	$9,204,077	5.9%	36.0%
	All Reporting Banks	$16,497,087,031	$11,561,173,211	$856,763,329	$622,038,286	$234,725,043	$32,502,193	$11,681,672	5.0%	35.9%
	All Banks	$18,657,111,315	$13,219,964,454	$973,457,748	$705,554,800	$267,902,948	$35,503,310	$11,681,672	--	--

Figure 2 benchmarks overdraft and NSF fee totals to the amount of non-interest income and service charge (fee) income each institution receives. In this way, we can see the dominant place that overdraft and NSF fees played in the operation of financial institutions in 2019, with institutions receiving as much as 38% of their non-interest income, and as high as almost 90% of their fee income, from overdrafts and NSF fees. Consistent with 2017 and 2018 data, two institutions, Woodforest National Bank and First Convenience Bank, stand out for their outlying small asset size, and for their high proportion of non-interest income derived from overdraft and NSF fees. Joining these two smaller institutions with a relatively high proportion of non-interest income that comes from fees is TD Bank, a fairly large bank which charged over half a billion dollars in overdraft and NSF fees in 2018. In the final benchmarked variable, USAA Federal Savings Bank stands out as the bank whose overdraft and NSF fee volume makes up the largest proportion of its total fee volume, at 89.2%. This owes largely to their generally low fee volumes, but also shows how significant a portion of service fees some banks derive from these highly punitive fees. The data here demonstrate that, along with big banks, small- and medium-size institutions located across both national and regional markets extract many millions of dollars in these fees from their customers.

Market and Product Scan Illustrate Bank Practices

This analysis also draws from a market scan of overdraft practices of the 10 largest institutions, ranked by asset size. To evaluate an institution's overdraft policies, we use indicators and features that bear directly upon the consumer experience of overdraft including the size of the fee; whether or not the institution charges overdraft fees on ATM or point-of-sale (POS) debit card transactions; whether or not the institution allows transfers from savings or a linked line of credit (LOC), which carry a lower cost than per-transaction overdraft fees; whether the institution has a cap on the number of fees it charges in a single day or a minimum size of an overdraft that triggers a fee; the transaction-processing order of the institution; and whether or not the institution charges sustained/extended overdraft fees in addition to per-transaction overdraft fees. When indicating that an institution uses a particular practice, the entire set of checking account options is considered. For example, if one of three checking account options for a bank's customers carries sustained overdraft fees, the bank is classified as charging those fees. Though some banks have accounts with greater protections than other accounts, the features of the least-protected accounts are covered here.

To show changes over time, this analysis includes comparisons with previous practices of the institutions. Cells in the chart are shaded in gray when they represent a change in policy or practice for the institution.

- All 10 of the nation's largest banks continue to charge overdraft fees in excess of $30, although a few do not charge these fees on point-of-sale (POS) and/or ATM transactions.

The size of overdraft fees is almost uniform across the largest 10 banks, between $34 and $36 per fee. Citibank and HSBC are the only ones of the top 10 banks that do not charge fees on overdrafts caused by either debit card POS or ATM transactions—transactions which could easily be declined by the banks for no charge. Bank of America does not charge fees for POS overdrafts and JPMorgan Chase does not charge fees for ATM overdrafts, but the remaining banks charge fees in both situations.

- More than one of the top 10 largest banks still engage in each of the following abusive practices: charging sustained/extended overdraft fees in addition to per-transaction overdraft fees; using high-to-low transaction processing for some types of debit transactions; and allowing five or more overdraft fees to be charged per day.

In Figure 3 below, we document further practices and policies of the top 10 banks by assets, counting BB&T and SunTrust as separate entities, while their consolidation after 2019's merger into Truist Bank continues.[36] Reflecting this merger, we add HSBC as an eleventh institution, to round out the list. Shaded in gray are the changes that institutions have enacted in the past year that represent likely positive changes for customers, including JPMorgan Chase officially abandoning its sustained overdraft fee, PNC Bank eliminating fees for overdraft transfers from savings or lines of credit, and TD Bank improving the terms of its overdraft transfers from savings. Note that while eliminating transfer fees is a positive development, it does not change the per-transaction fee averaging $35 that banks charge to customers who do not have savings or overdraft lines of credit or who lack funds availability in those accounts.

Extended Overdraft:

After several recent lawsuits in the past few years, large banks' policy of charging extended overdraft fees has been curtailed. Since last year, JPMorgan Chase ceased their extended fees. Four of the largest banks now charge them: US Bank; PNC Bank; BB&T; and SunTrust.

De minimis Policies:

In recent years, most of the largest banks have established a *de minimis* policy: the amount of negative balance, sometimes per transaction and sometimes per day, below which no fee will be charged. These *de minimis* policies can reduce the harm from a small overdraft, but in most cases, they do little to mitigate multiple and clustered overdrafts. None of the top 10 banks changed their *de minimis* policies in the past year.

Maximum Number of Overdraft/NSF Fees Charged per Day:

There is fairly wide variation in the number of fees (often combining overdraft and NSF fees) an institution will charge in a single day—between three and six among the largest banks. This translates to fees in the still unreasonable range of $102–$216 in a single day.

Transaction Reordering:

While transaction reordering to post transactions from largest to smallest has become less prevalent, some institutions continue to order some transactions from largest to smallest. Most of the 10 largest institutions do not post in order from smallest to largest, which would result in the lowest number of fees.

Overdraft Transfers:

More affordable alternatives to overdraft charges exist for bank customers. Unfortunately, while banks typically offer a transfer from savings and/or a line of credit for a lower cost, they often do not market these heavily, and these options are often not available to banks' most financially distressed customers, who are those hit hardest by the high-cost practices. On a positive note, PNC removed fees from its transfers from savings and credit line, and TD Bank lowered its fee for transfers from savings from $10 to $3, once per day in which a transfer was made.

Most of the 10 largest institutions do not post in order from smallest to largest, which would result in the lowest number of fees.

Figure 3: Overdraft Practices of the Top 10 Banks by Assets

Bank	OD Fee	OD Fee on POS?	OD Fee on ATM?	Sustained Overdraft Fee	*De Minimis* Amount/Policy	OD/NSF Fees Per Day Limit	Debit Transaction Processing Order	Cost of Transfer from Savings	Cost of Transfer from Line of Credit
JPMorgan Chase[37]	$34	Yes	No	None	Chase will not charge an OD fee if your account is overdrawn $5 or less at the end of each business day or if a transaction of $5 or less resulted in an OD.	Three	1. Electronic (real-time) 2. Checks (high-to-low)	$5 fee for transfers after the 6th in a month (includes all savings transfers)	Not available
Bank of America[38]	$35	No	Yes	None	Bank of America won't charge a fee for overdrafting purchases or amounts in overdraft of $1 or less.	Four	1. POS/ATM/teller (real-time) 2. Checks (number order) 3. Electronic (high-to-low)	$12 charged once daily, not for items or overages of $1 or less	$12 charged once daily, not for items or overages of $1 or less
Wells Fargo[39]	$35	Yes	Yes	None	Wells Fargo will not charge an OD fee if your account is overdrawn $5 or less at the end of each business day or if a transaction of $5 or less resulted in an OD.	Three	1. Real-time debits 2. ACH/checks (real-time, then low-to-high if same time)	$12.50 charged once daily	$12.50 charged once daily
Citibank[40]	$34	No	No	None	None	Four	1. Real-time debits 2. Checks (low-to-high)	$10 charged once daily	$10 charged once daily
US Bank[41]	$36	Yes	Yes	$36 per week after 7th calendar day	US Bank charges no OD fee for overages of $5 or less.	Four	1. Non-check (real-time, then low-to-high) 2. Checks (number order)	No fee	$12.50 charged once daily
BB&T[42]*	$36	Yes	Yes	$36 after 7th day	BB&T charges no OD fee (or transfer fee) for overages under $5.	Six	1. Real-time debits 2. Other debits (low-to-high) 3. Checks (number order)	$12.50 charged once daily	$12.50 charged once daily
SunTrust[43]*	$36	Yes	Yes	$36 after 5 consecutive business days of a negative balance	SunTrust will waive the overdraft/ returned item fees on transactions that are less than $5.	Six	1. Pre-authorized debits 2. Other debits	$12.50 charged once daily	$7 monthly fee for overdraft line of credit (no per-transfer fee); $12.50 charged once daily from other LOC
PNC Bank[44]	$36	Yes	Yes	None	PNC will refund OD fees if your account is overdrawn by $5 or less after all transactions are posted for the day.	Four	Generally, all debits in order based on date and time the bank receives notice of the transaction.	No fee	No fee
Capital One[45]	$35	Yes	Yes	None	Capital One will not charge an OD fee if your account is overdrawn $5 or less at the end of each business day or if a transaction of $5 or less resulted in an OD.	Four	1. ATM/ACH/debit (real-time, then low-to-high) 2. Checks/bill pay (high-to-low)	No fee	No fee on existing lines of credit; new lines not available as of 5/15/20
TD Bank[46]	$35	Yes	Yes	None	TD Bank charges no OD fee for transactions that overdraw your available balance by $5 or less.	Five	All debits and deposits in order based on date and time the bank receives notice of the transaction	$3 charged once daily	Not available
HSBC[47]	$35	No	No	None	If your available balance at the end of the business day is overdrawn by $10 or less, there will be no fee.	Three	1. Electronic (low-to-high) 2. All other items (low-to-high)	Not available	$10 per day with Select Credit Overdraft Protection

* While BB&T and SunTrust are in the process of merging their processes to become Truist Bank, they currently maintain separate sets of policies and practices. As such, we list them separately, though they represent one bank.

Please note: practices observed and updated on May 15, 2020.

Conclusion and Policy Recommendations for Ordinary Times

In addition to the suspension of overdraft fees desperately needed during this economic crisis (see the section specific to the COVID-19 crisis on page 4), reform of overdraft fees in ordinary times is long overdue.

CFPB has studied overdraft fee programs since 2012. Publishing multiple reports that highlight overdraft abuses, CFPB has repeatedly concluded 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.

The checking account market is broken. 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 reined in abusive fees and penalty rates, and the market shifted toward more transparent, upfront pricing and greater consumer satisfaction with their credit cards.

A shift toward 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 receipt of services.

Comprehensive reform of overdraft practices is not a far-fetched notion. The U.K.'s Financial Conduct Authority recently established rules, effective 2020, to end fixed fees for overdrafts and require pricing by a simple annual interest rate.[48]

Recommendations for Congressional or CFPB action:

- Prohibit overdraft fees on debit card and ATM transactions. Overdraft fees on ATM and debit card transactions have always represented banks' perversion of their original "customer courtesy" justification for overdraft fees because these transactions can so easily be declined in real time when the account lacks sufficient funds. These fees are unfair and abusive and should be prohibited.

  Short of a full prohibition of these fees, the protections now applicable to overdraft fees on prepaid cards should apply to debit cards on checking accounts. The Bureau chose to apply these protections in large part because it "believe[d] that many of these [prepaid card] consumers lost their checking accounts because they could not handle repeated overdraft fees." [49] The Bureau should address this problem *before* bank customers lose their accounts. In the checking account context, the Bureau should:

  - prohibit obtaining opt-ins until 30 days after account opening;
  - require an ability-to-repay determination for overdraft credit extended;
  - limit fees in the first year to 25% of the credit line;
  - allow payments to be due no more frequently than once a month, 21 days after a statement.

- Regulate overdrafts as credit under Regulation Z, subject to an 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 routinely pay a customer's transactions when the account lacks sufficient funds, the financial institution is clearly extending credit to that customer, and the product should be regulated as credit. This means that credit should only be extended based on a determination that the customer has the ability to repay it; consumers should get credit disclosures to enable them to compare different forms of credit; and the credit should be repayable in manageable installments.

- Require that fees be reasonable and proportional to cost. The size of the overdraft fee is the engine that drives overdraft abuses. The size of the overdraft fee has more than doubled since 1997, even as the cost of processing overdrafts has declined with greater automation. This outsized fee creates a strong and perverse incentive for banks to encourage the overdrafts with additional unfair and deceptive practices.

  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 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 should in no case exceed the size of the overdraft itself.

- 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 Credit 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. Typically, in the credit card context, this provision limits the fee to one per monthly statement cycle, or approximately one per month. 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 overdraft fees on any kinds of transactions 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. Moreover, charging overdraft fees on debit card transactions that are authorized against sufficient funds should be prohibited as an unfair practice or under Regulation E.

Endnotes

1 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 3 (July 2013), https://www.responsiblelending.org/state-lending/overdrafts.

2 *Id. See also CFPB Data Point: Checking account overdraft,* Consumer Financial Protection Bureau at 5 (2014), http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf (finding the median debit card transaction causing an overdraft is $24) *[CFPB 2014 Data Point].*

3 CFPB research found that the amount banks charged off from unpaid overdrafts represented only 14.4% of net overdraft fees. *CFPB Study of Overdraft Programs: a white paper of initial data findings* at 17 (June 2013), https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf *[CFPB 2013 White Paper].*

4 *CFPB 2014 Data Point* at 23.

5 Federal Reserve, Consumer Compliance Supervision Bulletin at 11 (July 2018), https://www.federalreserve.gov/publications/files/201807-consumer-compliance-supervision-bulletin.pdf; *see also* 2016 Interagency Overdraft Services Consumer Compliance Webinar at 20, https://www.consumercomplianceoutlook.org/outlook-live/2016/interagency-overdraft-services-consumer-compliance-discussion/ ("Unfair Practice: Assessing an overdraft fee based on the available balance at the time a transaction is posted when there were sufficient funds in the available balance to cover the transaction when it was authorized").

6 CFPB Supervisory Highlights at 8–9 (Winter 2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf.

7 *See, generally,* Comments of CRL and other consumer and civil rights groups on the CFPB's review of the overdraft opt-in rule, July 1, 2019, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-comment-overdraft-rfa-jul2019.pdf.

8 CRL's 2016 report *Broken Banking* analyzed quantitative and qualitative data from the Consumer Complaint Database maintained by the CFPB. One of the most salient themes within these complaints was the difficulty consumers had avoiding overdrafts even when they believed they would. Often, these complaints 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. Central to many complaints were unreasonably high fees per transaction and no meaningful limits on how frequently a consumer can be assessed a fee. Anderson, R., Borné, R. & Smith, P. (2016). Broken Banking: How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products, Center for Responsible Lending, http://responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_broken_banking_may2016.pdf.

9 *CFPB 2014 Data Point* at 12, Table 3; *see also CFPB Data Point: Frequent overdrafters* at 16, Table 2 (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf *[CFPB 2017 Data Point].*

10 Stacy's account appeared in *An Analysis of Bank Overdraft Fees, A Report by the Office of Senator Cory A. Booker* (August 2018), https://www.scribd.com/document/385303657/An-Analysis-of-Bank-Overdraft-Fees-Final.

11 The FDIC's 2017 survey of unbanked and underbanked households indicates that over 500,000 households who once had bank accounts are currently unbanked primarily because of high or unpredictable fees. FDIC 2017 National Survey of Unbanked and Underbanked Households at Appendix Table A.17, noting that there are 3,854,000 unbanked households who were previously banked. Of those, 10.9% cited account fees too high as the main reason they are unbanked, and 2.3% cited account fees unpredictable as the main reason, totaling 13.2%, or 508,728 previously banked households. 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.

12 Once ejected from the banking system, the ejecting financial institution reports the account holder to a database, like Chexsystems or Early Warning Service—a blacklist, essentially, where the consumer's name remains for five years, often preventing the consumer from being offered a checking or savings account with another financial institution. 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.

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

14 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." Wade Henderson, then-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.

15 *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/.

16 U.S. Bureau of Labor Statistics. 2020, May 8. *Statement of William W. Beach, Commissioner, Bureau of Labor Statistics. Available at* https://www.bls.gov/news.release/pdf/jec.pdf.

17 U.S. Bureau of Labor Statistics. 2020, May 8. *Statement of William W. Beach, Commissioner, Bureau of Labor Statistics. Available at* https://www.bls.gov/news.release/pdf/jec.pdf. In a survey conducted by Lake Research Partners and Chesapeake Bay Consulting, 18% of white respondents, 15% of Black respondents, and 32% of Latino respondents reported having been "laid off or furloughed." For details see footnote 18.

18 Lake Research Partners and Chesapeake Beach Consulting designed this survey, which was conducted online by Engine Insight's CARAVAN between April 15–17, 2020. The survey reached a total of 1,004 adults nationwide. Data were weighted slightly by age, gender, region, race, and education. The margin for error is +/- 3.1% and larger for subgroups.

19 Q3. [IF EMPLOYED before the coronavirus pandemic hit in March] Please specify in which ways your work life has changed in the past 30 days due to the coronavirus: Select all that apply: My hours at work have been reduced; I have been laid off or furloughed; I am taking unpaid time off; My work life has not changed.

20 Q3. [IF EMPLOYED before the coronavirus pandemic hit in March] Please specify in which ways your work life has changed in the past 30 days due to the coronavirus: Select all that apply: My hours at work have been reduced.

21 Q6. Now thinking about the monthly income of your household, including everyone in your home, how much has your household income changed since the onset of the coronavirus pandemic?

22 Q8. Please indicate which of the following actions your household has taken in the last 30 days, or is likely to take in the next 30 days, to manage expenses during the coronavirus outbreak: Carry a balance on a credit card (not pay the bill in full); Take money out of a savings account.

23 Bank of America, Wells Fargo, and Citibank are providing these credits. E. Flitter and A. Rappeport, "Some Banks Keep Customers' Stimulus Checks if Accounts Are Overdrawn," N.Y. Times, April 16, 2020, https://www.nytimes.com/2020/04/16/business/stimulus-paychecks-garnish-banks.html?login=email&auth=login-email. U.S. Bank, Truist, Capital One, and PNC Bank are providing these temporary credits as well. Others of the largest banks may be as well.

24 Capital One is waiving fees incurred between March 1 and receipt of the stimulus payment. Amanda Dixon, "List of banks offering help to customers impacted by the coronavirus," Bankrate, May 14, 2020, https://www.bankrate.com/banking/coronavirus-list-of-banks-offering-help-to-customers-financial-hardship/. U.S. Bank is waiving fees incurred between passage of the CARES Act, which provided for the stimulus payments (signed March 27), and the customer's receipt of the stimulus payment.

25 Press Release, U.K. Financial Conduct Authority, "FCA confirms temporary financial relief for customers impacted by coronavirus," April 9, 2020, https://www.fca.org.uk/news/press-releases/fca-confirms-temporary-financial-relief-customers-impacted-coronavirus.

26 U.K. Financial Conduct Authority, PS19/16: High-Cost Credit Review: Overdraft Policy Statement (July 6, 2019), https://www.fca.org.uk/publications/policy-statements/ps19-16-high-credit-review-overdrafts; *see also* Rupert Jones, "Bank overdraft fees: all you need to know about the changes," The Guardian, June 7, 2019, https://www.theguardian.com/business/2019/jun/07/bank-overdraft-fees-all-you-need-to-know-about-the-changes.

27 April 2020 Lake Research Partners and Chesapeake Beach Consulting survey, supra note 18. Question (combined split sample): Some lawmakers in Congress have proposed enacting new consumer protections for the duration of the coronavirus crisis [as a way of preventing lenders from taking advantage of borrowers and relieving financial pressure on individuals]. Please indicate whether you support or oppose each of the proposals below: Eliminating bank overdraft fees.

28 Press Release, "Booker, Brown to File Legislation to Temporarily Ban Overdraft Fees," Sen. Cory Booker, March 23, 2020, https://www.booker.senate.gov/news/press/booker-brown-to-file-legislation-to-temporarily-ban-overdraft-fees.

29 *See,* e.g., Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, Joint Statement on CRA Consideration for Activities in Response to COVID-19, March 19, 2020, https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-19a.pdf; FDIC Statement on Financial Institutions Working with Customers Affected by the Coronavirus and Regulatory and Supervisory Assistance, FIL-17-2020, March 13, 2020, https://www.fdic.gov/news/news/financial/2020/fil20017a.pdf; OCC Bulletin 2020-15, Pandemic Planning: Working with Customers Affected by Coronavirus and Regulatory Assistance, https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html.

30 "Federal Reserve issues FOMC Statement," March 15, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20200315a.htm.

31 "Federal Reserve Board announces temporary actions aimed at increasing the availability of intraday credit extended by Federal Reserve Banks," April 23, 2020, https://www.federalreserve.gov/newsevents/pressreleases/other20200423a.htm.

32 *See CFPB 2013 White Paper, CFPB 2014 Data Point, CFPB 2017 Data Point*.

33 New York Dept. of Financial Services, Executive Order No. 202.9, Emergency Relief for New Yorkers Who Can Demonstrate Financial Hardship as a Result of COVID-19, March 21, 2020, https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf.

34 *See* Corey Stone, Entrepreneur in Residence, Financial Health Network, *Why Banks Should Waive Overdraft and NSF Fees to Support Covid-19 Jobless,* March 2020, https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2020/03/13163725/Why-Banks-Should-Waive-Overdraft-Fees-Covid-19-1.pdf; *see also* David Silberman, "Dear bankers: Don't return to your old, shareholder-first ways," BankThink, American Banker, May 5, 2020, https://www.americanbanker.com/opinion/dear-bankers-dont-return-to-your-old-shareholder-first-ways.

35 Overdraft fees are charged for transactions the bank approves and pays despite insufficient funds. NSF fees are charged on check or electronic transactions the bank declines and does not pay when there are insufficient funds; NSF fees are not typically charged on declined debit card transactions. Data suggest that of all overdraft-related fees, approximately 80% are overdraft fees, while approximately 20% are NSF fees. *CFPB 2014 Data Point* at 10 (showing a 72%/19%/9% breakdown of non-sustained overdraft fees, NSF fees, and sustained overdraft fees, respectively).

36 Press Release, "BB&T and SunTrust receive regulatory approvals for merger of equals to form Truist," SunTrust, http://investors.suntrust.com/news/news-details/2019/BBT-and-SunTrust-receive-regulatory-approvals-for-merger-of-equals-to-form-Truist/default.aspx.

37 Chase Deposit Account Agreement and Privacy Notice, accessible at https://www.chase.com/content/dam/chasecom/en/checking/documents/deposit_account_agreement.pdf .

38 Bank of America Personal Schedule of Fees, accessible at https://www.bankofamerica.com/deposits/resources/personal-schedule-fees.go?request_locale=en_US

39 Wells Fargo Consumer Account Fee and Information Schedule.

40 Citibank Summary of Common Fees and Features, accessible at https://online.citi.com/JRS/popups/PT_CAP_BasicBanking_.pdf.

41 U.S. Bank Deposit Account Agreement, accessible at https://www.usbank.com/pdf/Deposit-Account-Agreement.pdf.

42 BB&T Checking At A Glance, accessible at https://www.bbt.com/content/dam/bbt/bbtcom/pdf/personal/banking/at-a-glance/personal/fundamentals-al-dc-fl-ga-md-sc-tn-va-wv.pdf.

43 Suntrust Essential Checking Account Overview, accessible at https://www.suntrust.com/content/dam/suntrust/us/en/personal-banking/2017/guidelines/essential-checking.pdf.

44 PNC Virtual Wallet Features and Fees, accessible at https://www.pnc.com/content/dam/pnc-com/pdf/personal/Checking/fees-vw-A.pdf.

45 Capital One Account Disclosures, accessible at https://www.capitalone.com/bank/checking-accounts/online-checking-account/disclosures/.

46 TD Bank Simple Checking Account Guide, accessible at https://www.tdbank.com/accountguides/Simple.pdf.

47 HSBC Basic Banking Terms & Charges Disclosure, accessible at https://www.us.hsbc.com/content/dam/hsbc/us/docs/pdf/deposit-terms-and-charges/basic_banking_chking_tcs.pdf.

48 U.K. Financial Conduct Authority, PS19/16: High-Cost Credit Review: Overdraft Policy Statement (July 6, 2019), https://www.fca.org.uk/publications/policy-statements/ps19-16-high-credit-review-overdrafts; *see also* Rupert Jones, "Bank overdraft fees: all you need to know about the changes," The Guardian, June 7, 2019, https://www.theguardian.com/business/2019/jun/07/bank-overdraft-fees-all-you-need-to-know-about-the-changes.

49 CFPB Proposed Rule on Prepaid Accounts, 79 Fed. Reg. 77101, 77211 (Feb, 23, 2014).

Center for Responsible Lending

www.responsiblelending.org

The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

CRL is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts, and auto loans.

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