June 29, 2012

Reinvestment Partners
110 E. Geer St.
Durham, NC 27701

Monica Jackson
Consumer Financial Protection Bureau
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
cfpb_overdraft_comments@cfpb.gov

RE: Impacts of Overdraft Programs on Consumers: Docket No. CFPB-2012-007

Dear Ms. Jackson:

We would like to submit a comment on the question of how impacts to consumers from overdrafts should best be designed to protect the needs of account holders.

Reinvestment Partners is a 501 © 3 organization in Durham, North Carolina. We advocate on behalf of underserved constituencies to improve their ability to access sound and affordable financial products.

Overdraft protection and overdraft transfer fees impose a significant burden upon American households. Banks and credit unions collected $24 billion in overdraft fees in 2009. More than 27 million account holders overdrew their checking account more than five times in that one calendar year (Parrish, 2009). The price paid by consumers is far greater than the cost borne by banks to extend the service: consumers paid $2 in overdraft fees for every $1 extended to them by banks or credit unions (Halperin, 2007). Consumers that repeatedly overdraw their accounts tend to have lower incomes, to be younger, and to be drawn from minority populations.

In fact, we believe that the banks are still engaging in practices that put their financial gain before the interests of their consumers.

We make the following recommendations:

Add flexibility to the process of opt-in: Opting-in for overdraft should be revised to enhance customer choice. Even with changes to Regulation DD and E, the decision to opt-in remains a poor fit. The decision to opt-in is a monolithic choice that forces consumers to make a choice with poor information. Thus, even when a consumer chooses to enable their account with overdraft, they should still be able to decide if they would prefer to decline the overdraft service on a transaction-by-transaction basis when possible. It is reasonable to imagine a situation where a consumer would accept an overdraft to keep their utility accounts open but prefer to avoid an overdraft when purchasing a cup of coffee.

Give consumers the right to opt-in for each type of transaction: Rather than bundle all payment modes into one question, issuers should allow consumers to designate which transactions they would like to have set up with overdraft service. For example, a consumer could direct the issuer to pay all ACH withdrawals but not for point-of-sale transactions.

In general, regulation should ensure that issuers provide just-in-time information at the point of overdraft. Technology now exists to deliver a warning at the point-of-sale. While it is currently common to offer such protection at ATMs, it is less common at the point-of-sale.

When a consumer makes a point-of-sale transaction that results in an overage, he or she should be given the chance to rectify that imbalance prior to the end of the next business day.

An issuer does not provide provisional credit to a consumer until transactions clear at the end of the day. It should be possible for a consumer to avoid an overdraft if he or she can rectify the shortage before transactions clear.

Use technology to reduce the risk of an unwanted overdraft:

1. **For ATM withdrawals and transactions made at the point of sale**: The process of over-drafting should include a step where the consumer is warned prior to completing certain transactions. It is not uncommon for consumers to accept text messages from their issuer. Banks should send text messages to consumers at the point of sale when they are about to make an overage.

   Secondly, consumers at the point-of-sale should be offered the chance to make a split transaction.

   It may be the case that payment "decisioners" will be called upon to operationalize the process of alerting a consumer with a text message. Payment processing "decisioners" such as Total System Services (TSYS) or First Data have access to the information in real time to account balances. Save for the possibility of an ACH withdrawal or a pending bill payment, the decisioner can make it possible to warn a consumer.

2. **For ACH withdrawals and electronic bill payments**: The consumer should be required to opt-in for overdraft for each of these services. The consumer should be able to opt-out without closing their account at any time.

No overdraft fees when there is an overage solely due to the extension of provisional credit. Issuers extend provisional credit when the cost of a transaction is not known when a card is swiped at the point-of-sale. This is the case most often when a consumer buys gas at the pump, rents a car, pays for a meal, or uses their card to cover potential expenses at a hotel. Issuers are allowed to determine how much to debit a card for each vendor. In my research, some issuers debit a card for $100 at the point of purchase at a gas station pump. When the extension of provisional credit is the sole reason for an overage, the issuer should not be able to charge an overdraft.

Regulate how issuers explain overdraft to consumers during the opt-in process. While the banks may argue that consumers are cognizant of their decisions to overdraft, this statement ignores the damaging polices that many have implemented in recent years to generate fees at the expense of their customers. The evidence is clear that some banks have intentionally trying to manipulate accounts to impoverish their consumers. It was revealed that Union Bank of California had hired a consultant to give advice on how they could design their accounts to generate the most NSF and overdraft fees. Union Bank of California agreed to give the consultant, Cast Management Consultants, a twenty percent cut on extra overdraft fees.

The CFPB should create a uniform text for the opt-in process. The Federal Reserve has created model language for an opt-in form. We applaud the Federal Reserve for taking this step. However, the form lacks key elements.

1. **The opt-in process should introduce the consumers to alternative, lower-cost options**. Consumers should be offered the opportunity to link their checking account with another account, be it a savings account, a line of credit, or a credit card. The overdraft transfer generally has a lower fee than does standard overdraft protection. According to research by the Pew Charitable Foundation, the median cost of an overdraft transfer was $12 at banks and $5 at credit unions.
2. **The opt-in process should inform people of the capacity to have a text message alert.** The same Pew survey found that only 37 percent of consumers that opted-in for overdraft knew of the availability of such a service.
3. **Create universal terms for overdraft transfer and overdraft protection**. Some issuers use the term "standard overdraft." This suggests that there is a default choice.
4. **The form should make it clear to consumers that they can choose to not return the form.** Some issuers have designed their form to suggest that the consumer is required to return the document regardless of their choice. It should be clear to consumers that it is legitimate to not take any action.
5. **The form should create a standard space for listing the various fees and procedures surround overdraft:**
    a. Specific fee amounts for overdraft protection and overdraft transfer fees.
    b. The presence or lack of a purchase cushion.
    c. The presence of lack of additional extended overdraft fees in the event that an overage remains unsatisfied for an extended period of time.
    d. The trigger period and the amount for those additional fees.

Require issuers to suspend overdraft when consumers incur too many overdrafts within a specific time period. This would echo the current requirements put in place by the Office of the Comptroller of the Currency with regard to checking account direct deposit advance products. The OCC requires that banks suspend the service when consumers use the service more than six times in one year. The CFPB should consider a similar protection with regard to overdraft. Issuers should develop financial literacy programs for such consumers. They should demonstrate that they have delivered a financial literary program before the service is resumed.

No overdraft for prepaid debit cards: Due to both the cost and to the uncertainty of their occurrence, many consumers have left checking accounts and moved to general-purpose reloadable prepaid cards.

There is a unique value to the prepaid card product. Since it does not have credit, it is able to bring more consumers in to the payments system. Almost one in five prepaid debit card holders cannot qualify for a checking account. Banks use scoring to vet new applications. Being on Chex Systems or a similar registry is usually an automatic disqualifier, but it can also be difficult to get a checking account without a thin-file, no-file, or a poor credit score. In that context, prepaid becomes a far better option than cash or informal payments.

This prohibition should be extended both to general purpose reloadable prepaid debit cards as well as to payroll cards. It should be a standard for any cards that receive benefits from the federal government.

Conclusion

The prepaid card industry provides an interesting example of an overdraft program that extends many of these protections. We offer this example with a caveat: no prepaid card should have an overdraft function.

NetSpend prepaid debit cards use a system that would conform to this standard. The NetSpend system ("Purchase Cushion" and "Overdraft Protection Service") works like this:

- No overdraft fees for overages of less than $15. No more than three overdrafts in one month are honored.
- Transactions are processed chronologically.
- Consumers must opt-in for overdraft and are allowed to opt-out at any time.
- If a consumer is going to overdraft, they are alerted by text message if possible.
- They are allowed to make a "split-transaction."
- The overdraft fee is only ten dollars.
- The consumer has twenty-four hours to satisfy the overage.
- NetSpend requires that a consumer have a direct deposit of at least $200 in the last 36 days in order to maintain overdraft protection. Thus, overdraft is not a permanent feature of any account.

The NetSpend example should be taken only as evidence of an alternative mode for providing overdraft on checking accounts. We do not believe that prepaid cards should have overdraft service. However, the fact that a prepaid card company can offer a lower-cost overdraft with more protections should undermine the arguments of any issuer that it would be too costly to provide a similar service on their checking accounts. Prepaid card issuers commonly provide "provisional credit" to many households. Due to the high percentage of their cards that are only held for a short period of time, prepaid issuers take a much greater risk to extend overdraft. In spite of that fact, they are doing so at less cost to consumers. Again – we are emphatic that overdraft should not be a part of any prepaid card – but <u>this example underscores that fact that banks should be able to offer a low cost, highly flexible, and consumer-friendly product on their checking accounts.</u>

We appreciate your concern for the interests of consumers.

Sincerely,

Adam Rust
Director of Research
Reinvestment Partners
adam@reinvestmentpartners.org
919-667-1000