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**VIA EMAIL: [cfpb\\_overdraft\\_comments@cfpb.gov](mailto:cfpb_overdraft_comments@cfpb.gov)**

June 29, 2012

Ms. Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1500 Pennsylvania Ave NW

Attn: 1801 L Street NW

Re: **Docket No. CFPB-2012-0007**  
**Questions: (a) – (d)**

Dear Ms. Jackson:

I am writing from Woodstock Institute in response to the Consumer Financial Protection Bureau's request for information on the use and impact of overdraft programs by financial institutions. In this letter we provide answers to questions (a) through (d) from the Bureau's Notice and Request for Information. Our comments are focused on challenges to developing low-cost alternatives to overdraft programs, the need to develop an overdraft guidance specific to the payment channel used to overdraft, and the importance of placing regulatory limitations on repeat usage of overdraft programs.

Woodstock Institute has commented on previous proposed rules and requests for information on overdraft practices and these comments are consistent with our previous comments to the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. We encourage the Bureau to use its authority to collect information about how and when consumers use overdraft programs and use that information to ensure that overdraft programs do not make the cost of basic transactional accounts prohibitive.

**About Woodstock Institute**

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. We conduct research on financial products and practices, promote effective state and federal policies, convene a coalition of community investment stakeholders working to improve access to credit, and help people use our work to understand the issues and develop and implement solutions.

**a) Lower cost alternatives to overdraft protection programs offered by financial institutions**

Woodstock Institute considers overdraft programs to be a form of credit, regardless of whether overdraft charges are levied consistently on all transactions that result in a negative account balance or whether overdraft charges are the result of conditional approval.

In all cases, overdraft programs should be offered alongside any other product designed to avoid situations where a transaction fails to clear due to payments processing procedures or negative account balances. However, it is important to recognize that consumer choice is relatively limited and many consumers are unable to access lower-cost alternatives.

Many other products that could serve as lower-cost alternatives to overdraft programs require either additional liquidity (such as savings accounts), which many consumers do not have, or require additional underwriting (such as linked credit cards), for which many consumers cannot qualify. If consumers are unable to utilize, or are disqualified from choosing, lower-cost alternatives to overdraft programs, then the issue of credit access becomes a fair lending concern. We support the FDIC's application of the Equal Credit Opportunity Act (ECOA) to overdraft programs and linked account alternatives, since there is a significant pricing difference between the costs associated with overdraft programs and the costs associated with using transfer from a savings account or credit card. Since these credit pricing issues raise fair lending concerns, we encourage the CFPB to continue to monitor overdraft programs, such as linked credit cards, that require credit approval.

**b) Consumer alerts and information provided regarding balances and overdraft issues**

Consumers carry out financial transactions through a number of different payment channels which present a variety of different challenges with repeated overdrafts.

Overdrafts on point-of-sales debit transactions, which clear immediately, should be approved only at the request of the consumer before the transaction is processed and only at the point of sale. Overdrafts for ACH transactions or paper checks should be approved only if a consumer has chosen to opt-in to an overdraft program in advance, and only if the consumer continues to opt-in after each overdraft is processed.

ATM overdrafts should, in all cases, be prohibited, since they are an affirmative choice to access credit, rather than protection against overdrawing funds due to payments processing procedures.

**c) Impact of changes to Regulation DD and Regulation E and overdraft opt-in rates**

Previous research reviewed by the CFPB during the development of the request for information identified widely varying consumer opt-in rates for overdraft programs offered by financial institutions. Opt-in rates varied from 16 percent to 75 percent, a significant difference and one that we believe warrants further investigation. Woodstock recommends that the CFPB conduct its own research on consumer opt-in rates to identify any differences in opt-in rates by type or size of financial institution, consumer risk-profile, or protected class.

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We also recommend a periodic review of the marketing materials for overdraft opt-in campaigns carried out by financial institutions to better understand the how specific opt-in requests are made, and whether overdraft opt-in requests are tied to other product offerings, such as electronic alerts, linked account registration, or linked credit cards.

**d) Impact of changes in financial institutions operating policies**

The CFPB should closely monitor operating policies that can result in repeat usage of overdraft programs or result in the accrual of numerous fees. Overdraft fees are considered protection against overdrawing funds due to payments processing procedures, so payments should be ordered according to when they clear rather than highest to lowest, which maximizes overdraft fees. Overdraft fees must be reasonable and proportional to the amount of the overdraft and should not be punitive. Overdraft fees should also be proportional to the actual costs incurred by the financial institution when it processes the overdraft.

Regardless of specific operating policies in place, we believe that repeat overdraft usage should be restricted and that financial institutions should be prohibited from charging more than one overdraft fee per month and more than six overdraft fees per calendar year.

**Conclusion**

The Consumer Financial Protection Bureau's request for information on the use and impact of overdraft programs is an important opportunity to use the Bureau's ability to collect new information on how overdraft programs impact consumers. We encourage the Bureau to use its authority to collect data and develop a broader understanding of how consumers use overdraft programs offered by financial institutions and how meaningful regulation can prevent repeat usage.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Feltner', with a stylized flourish at the end.

Tom Feltner  
Vice President

TF/bab