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July 1, 2019

Director Kathy Kraninger  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

RE:Docket No. CFPB-2019-0023

Dear Director Kraninger:

Woodstock Institute offers this comment in response to the notice of review of the Overdraft Rule under Section 610 of the Regulatory Flexibility Act. The Rule has saved billions of dollars for consumers, and should be strengthened, not weakened.

**About Woodstock Institute**

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investments; wealth creation and preservation; and safe and affordable financial products, services, and systems. 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. Our key tools include: applied research; policy development; coalition building; and technical assistance. Woodstock Institute has been a recognized economic justice leader and bridge-builder between communities and policymakers in this field since it was founded in 1973 near Woodstock, Illinois. Among the issues recently on Woodstock's policy agenda are payday and auto title lending, check-cashing fees, small business lending, abusive municipal fines & fees, and the Community Reinvestment Act.

**Overdraft is an Unjust System**

Overdraft causes many consumer harms. Arguably chief among them is that it has the effect of kicking people out of the mainstream financial system. Overdrafts are the leading reason consumers lose their bank accounts. Last year, Woodstock led a campaign to protect consumers

from an excessive increase in the maximum fees that check-cashers -- called “currency exchanges” in Illinois -- could charge to cash a check. Folks who cash checks at currency exchanges are disproportionately unbanked and disproportionately people of color. Banked consumers typically get cash by visiting one of their banks’ ATMs. The check-cashing fee they pay is, of course, *zero*.

Among the affected consumers we mobilized to push back against the proposed hike in check-cashing fees was a woman named Evelyn (not her real name). Evelyn is the single mother of four boys who relies on currency exchanges because she racked up unpayable overdraft fees at TCF Bank. If she could get current on the fees she owes the bank, she would like to resume being a TCF customer because of the convenience of the bank’s locations.

Overdraft fees are a big part of the reason why, as we say, “It is expensive to be poor.” Almost by definition, people struggling to pay overdraft fees are struggling to make ends meet.<sup>1</sup> Using their money to line the pockets of rich bank executives symbolizes what is wrong with our country’s financial system.

To reform this indefensible business model and bring fairness to the checking account market, we urge the CFPB to take the following courses of action:

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

Short of a full prohibition, apply the protections now applicable to overdraft fees on prepaid cards to debit cards on checking accounts. If only from the standpoint of regulatory uniformity, overdraft protections for checking accounts should not be weaker than overdraft protections for debit cards. These protections include:

- Prohibit obtaining opt-ins until 30 days after account opening;
- Require an ability-to-repay determination for overdraft credit extended (see #5 below);
- Limit fees in the first year to not more than 25 percent of the credit line;
- Allow payments to be due no more frequently than once a month, 21 days after a statement.

- 2. Rein in the excessively large fees.** Fees should be reasonable and proportional to the size of the overdraft and capped at no more than \$35.
- 3. Stop the unfair snowball of fees.** Banks often charge multiple fees in a single day, extracting a fee for each transaction after a customer’s account has already gone

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<sup>1</sup> Center for Responsible Lending, *Unfair Market: The State of High-Cost Overdraft Practices in 2017* (Aug. 2018). <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-unfair-market-overdraft-l-aug2018.pdf>

negative, rather than one fee for a negative balance at the end of the day. Many then charge “extended overdraft fees” when customers are unable to pay the combined cost of all fees already charged and the amount by which the account was overdrawn. Once an account has become negative and customers have been charged a fee, they should have a chance to bring the account to positive before the bank piles on additional fees. So, the number of fees should be limited to a reasonable number such as one per month and six per year; sustained fees should be eliminated; and scams like reordering to maximize fees should be prohibited.

**4. Strengthen opt-in requirements.** If the opt-in rule is generally retained as is:

- Provide that consent expires after six total overdraft fees in a rolling 12 months;
- Allow financial institutions no additional discretion in opt-in disclosures, and prevent misleading marketing or approaches to obtaining opt-ins; and
- Conduct research, including a statistically significant consumer survey, to determine the degree to which consumers who have opted in understand (a) that they have opted in, and (b) the potential consequences of that decision.

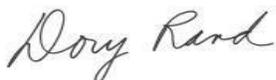
**5. Regulate routine overdrafts as the credit product they are.** When a bank routinely and regularly covers overdrafts in exchange for a fee when a customers’ account lacks sufficient funds, the product is being administered as credit. Decades ago, overdraft fees were given a regulatory exemption from the Truth In Lending Act (TILA) based on the premise that a bank’s covering a paper check was an occasional courtesy whereby the bank exercised discretion in paying or declining an individual transaction. That rationale clearly does not apply to a modern overdraft program that is largely automated, where there is no exercise of discretion regarding each individual transaction, and when banks routinely and repeatedly overdraft accounts, causing excessive numbers of overdraft fees every year. This is not occasional, and it is not a courtesy. Routine overdrafts are credit and they and any finance fees should be repayable in installments, on a regular monthly billing cycle, rather than as a balloon repayment upon receipt of the customer’s next deposit. Overdrafts should also be made subject to a determination of the customer’s ability to repay.

## **Conclusion**

A system that shifts about \$15 billion per year in overdraft fees from mostly low-income folks to wealthy financial institutions, their rich shareholders, and top executives represents everything that is wrong with our financial system. Strengthening the overdraft rule would bring some measure of fairness to this unjust system.

As always, we welcome any questions or comments.

Very truly yours,



President