



June 27, 2012

Ms. Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, D.C. 20552

**Regarding: Docket No. CFPB-2012-0007 - Impact of Overdraft Programs on Consumers**

Dear Ms. Jackson:

The Community Bankers Association of Illinois (CBAI), on behalf of its approximately 400 community bank members, is pleased to provide the Consumer Financial Protection Bureau (CFPB) with our observations and recommendations on overdrafts and the impact of overdraft programs on consumers. CBAI appreciates the CFPB seeking this information to increase its understanding of this important consumer service and to inform your future rulemaking.

At the outset, it is important to state that overdrafts are completely within the ability of the consumer to control. The obvious first line of defense against overdrafts is customers knowing the balance in their account before they write checks, authorize debits, or otherwise withdraw funds from their accounts. This first line of defense is significant and has serious implications.

Section 17-1 of the Illinois Criminal Code/Deceptive Practice states, “... the defendant [consumer] has acted with the intent to defraud when the defendant fails to have sufficient funds on credit with the depository when the check or order is issued, delivered ...”

The Illinois Uniform Commercial Code states in §4-303, “Further, the drawer [consumer] has drawn all of the checks, the drawer should have funds available to meet all of them ...”

Paying an overdraft versus returning a check unpaid (absent a link to another account or other formal arrangement) is a privilege for the consumer and not a right. Banks incur significant operating losses for unrecoverable overdraft items which they have in good faith paid as a courtesy or service to the customer. There are also significant operating costs associated with processing overdraft items including making informed decisions to pay or return the items. In exchange for processing overdrafts, banks may charge a fee. These fees are set individually by banks to cover their operational losses and expenses. To reiterate, these fees are avoidable by the consumers by not overdrawing their accounts.

Accounts are subject to many banking regulations which require clear and thorough explanations for which banks are examined periodically to make sure they are in compliance. Accounts have many features and a clear and thorough explanation is required to avoid any misunderstandings. Banks have also incorporated their many lessons-learned into their account disclosures. Unfortunately, many consumers do not read the account disclosures and are thus unaware of their responsibilities and the consequences for not following the account rules and regulations. This situation was confirmed in a Pew Charitable Trust study's Key Findings when it stated, "Bank-provided [account disclosure] information is lengthy and goes unread."

Customers have alternatives to having overdraft items returned and fees assessed against their accounts. They may link their checking account to a second account, apply for an overdraft protection line of credit, or enroll in a bank's overdraft protection program. Customers are made aware of these various options by knowledgeable community bank customer service representatives.

Customers who use overdraft payment programs understand the service and prefer it to other sources of short-term funding. As a result, overdraft services should continue to be readily available and regulatory policy should not impede community banks' ability to do so. Without this service, consumers face consequences including merchant returned check fees, the embarrassment of a dishonored check, and negative credit agency reports.

Community banks may offer "Alerts" when an account balance falls below a predetermined minimum. "Alerts" however should be considered the last line of defense to prevent overdrafts. A responsible consumer balances their account statement on a monthly basis and knows their

account balance. A consumer, not the bank, should know if their account is in danger of becoming overdrawn.

Consumers with adequate account balances should not fear or favor a particular posting method. The three most popular posting methods each have their proponents and there is reasonable logic to support any of the methods (i.e. numerical (the order the clearing checks are written is the order they are be posted), lowest dollar amount to highest (this ensures the largest number of checks are paid), highest dollar amount to lowest (this typically ensures the most important checks are paid)). The Illinois UCC clearly states each of these methods are an option for a bank in determining the posting order in §4-303 (b), “... *items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.*” Further, in the Official Comment #7, “...*and [customer] has no basis for urging one [check] should be paid before the another ...*” Absent changing the posting method without proper disclosure to maximize overdraft fees, community banks should be allowed to select the posting method of its choice.

It is not out of the realm of possibility for a community bank or customers to make an error. If an error is made community banks are positively positioned to resolve the problem by clearly disclosing bank policies and procedures, providing a guide on the back of their monthly account statements to help balance accounts, 24/7 telephone banking, internet access, and qualified customer service representatives. This high level of customer service and support is a hallmark of community banks.

CBAI opposes the CFPB or Congress fixing the price of any bank fees including overdraft or return check fees. The fee for an overdraft or any other bank fee should be set by the bank and determined reasonable by the market not the CFPB or Congress. Community banks clearly inform their customers of their policies and procedures in their account disclosures together with a detailed fee schedule. Consumers do indeed know (or have the reasonable opportunity to know) before they overdraw their accounts.

The CFPB inherited consumer regulations including those governing overdraft protection programs (ODP). Unfortunately, the various banking regulators acted in an uncoordinated manner in implementing their ODP requirements. CBAI voiced its objection – but to no avail. The inevitable result of this form of rulemaking was a regulatory patchwork quilt. CBAI

recommends consistency for all charter types with reasonable rules and regulations governing overdrafts and ODPs.

CBAI recommends the CFPB consider the increased cost of implementing any new regulations to include systems and compliance supports. This recommendation is consistent with the January of 2011 Executive Order #13563 titled "*Improving Regulation and Regulatory Review.*" In that Executive Order, the President directed the identification and use of the best and least burdensome tools for achieving regulatory ends, and to take into account benefits and costs (both quantitative and qualitative) and to propose or adopt regulation only upon a reasoned determination that the benefits will justify the costs.

In your review of overdrafts CBAI encourages a balanced approach.

Consumer should understand their account relationship including, being familiar with their account disclosure and fees, knowing the balance in their account, and avoiding unauthorized overdrafts - or be prepared to pay a fee set by the bank for handling the unauthorized overdrafts including paying or returning the items.

It is the community banks' responsibility to do what they have consistently done in the past and will continue to do in the future, namely deal with their customers in a straight-forward, honest and reasonable manner and to not abuse their customers. Relationship banking is the business model of community banks. This is a responsibility community banks take very seriously.

CBAI cautions the CFPB in proposing any new regulatory requirements. The regulatory burden on community banks has increased markedly and disproportionately during the past few years. As a result, community banks are justifiably seeking relief from costly and nonproductive regulations. CBAI recommends the CFPB reduce the regulatory burden on community banks by simplifying account disclosures so they are more easily understood by the consumers who will read them.

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Thank you for your consideration of these observations and recommendations. If you have any questions or need additional information, please contact me at 847-909-8341 or by e-mail at [davids@cbai.com](mailto:davids@cbai.com).

Sincerely,

/s/

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