



Checking Account Overdrafts – CFPB Reports and Industry Updates

Executive Summary

The Consumer Financial Protection Bureau's (CFPB or Bureau) Office of Research recently released a Data Point report on *Checking Account Overdrafts*. The report builds on the CFPB's June 2013 White Paper, which presented initial findings from the Bureau's study of overdraft programs associated with consumer checking accounts. In that White Paper, *CFPB Study of Overdraft Programs: A White Paper of Initial Data Findings*, the CFPB concluded that overdraft programs can be costly to consumers who use them and that both consumer outcomes and policies related to overdraft programs can vary considerably across banks. The wide variations across institutions led the Bureau to also conclude that "certain practices and procedures may merit further analysis to determine whether they are causing the kind of consumer harm that the federal consumer protection laws are designed to prevent."

For the 2014 Data Point report, the Bureau conducted additional studies of certain White Paper findings, using additional data from those banks that also participated in the White Paper studies. Key findings suggest:

- Consumers that have "opted-in" to overdraft programs pay an average of \$250 or more per year in checking account fees, and overdraft and insufficient fund (NSF) fees account for 75 percent of the total fees they pay.
- Opted-in accounts are three times as likely to have more than ten overdrafts per year as accounts that have not opted-in. Opted-in accounts have seven times as many overdrafts that result in fees as do accounts that have not opted-in.
- Nearly 75 percent of overdraft fees are incurred by 8 percent of those account holders that annually incur more than ten overdrafts.
- Debit transactions are most likely to result in overdrafts and the median transaction size of a debit that results in overdraft is \$24.

The Bureau's review of overdraft programs is ongoing and additional reports are anticipated. Areas identified as needing further review included the relationship between "opting-in" and increased overdraft activity, and the treatment of sustained negative balances. Regulatory action by the Bureau is anticipated in or around February 2015 and "might include disclosures or address specific acts or practices."

Background

The studies summarized in the Bureau's White Paper were based on responses to a February 2012 CFPB-initiated *Request for Information* and a detailed study of overdraft programs at nine large financial institutions supervised by the CFPB (Study Banks). The information provided by the Study Banks was institution-level data

and the findings were “intended to provide the factual basis to inform efforts to develop more uniform treatment of these issues across financial institutions.” The Data Point report is based on reviews of account-level and transaction-level data for approximately two million accounts obtained from the same Study Banks. The CFPB states the transaction data “provide a more detailed picture of overdraft activity than do the aggregated statistics that formed the basis of the White Paper, and have allowed [it] to apply a uniform method across banks to measuring the various statistics.”

The “opt-in” provisions of Regulation E (*Electronic Funds Transfer Act*) became effective in January 2010 with mandatory compliance beginning July 1, 2010. They apply only to overdrafts on automated teller machine (ATM) and one-time debit card transactions and prohibit financial institutions from charging consumers overdraft fees for these types of transactions unless a consumer affirmatively consents, or “opts in,” to the overdraft service. The rule further prohibits a consumer’s opt-in status to influence a financial institution’s payment of check or other transaction overdrafts or any account terms, conditions or features it offers.

Description

Data Point Report

The findings of the studies in the CFPB’s 2014 Data Point report on *Checking Account Overdrafts* address the following four topics and include the following points:

Average Checking Account Fees

- Overdraft and NSF fees comprise more than half of monthly net checking account fees for the following five major checking account fee categories – ATM and Account Usage Fees (e.g., wire transfer fees), Maintenance Fees (periodic fees that can be waived for minimum balances or other measures), Transfer Fees, Other Fees (e.g., fees for stop payments or returned deposits), and Overdraft and NSF (including fees charged for sustained negative balances).
- Approximately 14 percent of the account holders had opted-in to overdraft coverage (opt-in accounts) and these accounts experienced higher Overdraft and NSF fees compared to accounts that had not opted-in, in absolute terms (\$21.61 per month compared to \$2.98 per month) and as a percentage of total fees (74.1 percent compared to 41.0 percent).

Distribution of Overdraft Frequency

- A majority of accounts (nearly 70 percent) do not incur any overdraft fees on an annual basis and approximately 82 percent of accounts incur three or fewer overdrafts.
- Nearly 75 percent of overdraft fees are incurred by 8 percent of those account holders that annually incur more than 10 overdrafts.
- Nearly 18 percent of opted-in account holders incurred more than 10 overdrafts per year and accounted for nearly 85 percent of overdraft fees paid by the opt-in accounts. In contrast, just under 6 percent of account holders that did not opt-in incurred more than 10 overdrafts per year.
- More than 90 percent of account holders that do not use debit cards also incur no overdrafts charges.

Overdrafting by Transaction Type

- Debit Card transactions are by far the most frequent of the six types of customer-initiated checking account transactions identified by the CFPB (approximately 17 transactions per month overall; approximately 24 transactions per month for opt-in account holders alone). The other transaction types include ACH, ATM, Check, Other (e.g., online transactions), and Teller, and collectively accounted for 11 transactions per month.
- The median size of a Debit Card transaction that results in an overdraft is \$24, while the median transaction size for an overdraft under all of the transaction types is \$50.
- The incidence of overdrafts is higher across all transaction types for opted-in accounts.
- Opted-in customers have seven times as many overdraft transactions that result in fees than customers that have not opted-in.

Negative Balance Episodes

A negative balance episode is the sequence of days following an initial overdraft during which an account holder's balance remains negative. The study found that 29 percent of negative balances were returned to a positive balance within one calendar day; "more than half of all episodes last three days or fewer, and 76.1 percent last a week or less." Fewer than 3 percent last 45 days or more and some of these result in an account closure and negative balance charge-off.

White Paper

The CFPB's 2013 White Paper findings draw "principally" on –institutional-level information received from the nine Study Banks using 2010 and 2011 information. The CFPB reached the following conclusions:

- Overdrafts are a costly service with an average \$225 in overdraft- and NSF-related fees paid by all Study Bank accounts that had one or more overdraft transactions in 2011.
- "Heavy overdrafters," those who incurred more than ten overdrafts during the year, accounted for as many as a quarter of consumers who incurred overdraft or NSF fees in 2011.
- The Study Banks' rates of involuntary account closures "varied widely," though collectively they involuntarily closed 6 percent of consumer checking accounts, "mostly due" to unpaid negative balances.
- Consumers who opened checking accounts in 2011 chose to opt-in at higher rates than did consumers with existing accounts. However, opt-in rates "varied dramatically" across the Study Banks with rates ranging from single-digit percentages to more than 40 percent.
- Overdraft and NSF fees paid by those who opted-in declined less than the fees paid by those who did not.
- Bank practices and policies that can affect overdraft and NSF fee levels, include:
 - When deposit funds become available;
 - How banks treat holds resulting from debit card authorizations;
 - The posting order of transactions;
 - The methods and levels used to set overdraft coverage limits;
 - The availability of waivers or delays for assessing fees on accounts with *de minimis* or short-term overdraft transactions;

- Whether and how fees are charged for sustained negative balances; and
- How overdraft protection programs are promoted as well as how new account applicants are screened.

Additional Overdraft-Related Issues

Regulatory Reporting - Call Reports

The Federal Financial Institutions Examination Council (FFIEC) has announced (January 2014) planned revisions to the *Consolidated Reports of Condition and Income* (Call Report) that will provide the prudential regulators with detailed information regarding Overdraft and NSF fees. (Notice of a Request for OMB approval was published in the *Federal Register*.) Under the revisions, insured depository institutions with \$1 billion or more in total assets that offer one or more deposit account products (other than time deposits) primarily intended for consumers will be required to report the amount of income earned from each of three categories of service charges on their consumer deposit account products beginning with their March 31, 2015 Call Report.

- Overdraft service charges and fees related to the processing of payments and debits against insufficient funds, including NSF check charges, and all subsequent charges levied against overdrawn accounts, such as extended or sustained overdraft fees charged when an account maintains a negative balance for a specified period of time.
- Service charges for maintenance of the deposit account, including charges resulting from the account owners' failure to maintain specific minimum deposit balances or meet other requirements, as well as fees for transaction activity in excess of specific limits for an account and recurring fees not subject to waiver.
- Service charges levied for transactions, including deposits to or withdrawals from deposit accounts, conducted through the use of ATMs or remote service units, owned, operated, or branded by the institutions, other institutions, or other third-party, non-bank ATM operators (excluding certain charges that are to be reported elsewhere in the Call Report.)

Regulatory Releases and Guidance

CFPB

The CFPB has had an ongoing interest in issues related to checking account overdrafts.

- In both the Data Point report and the White Paper, the Bureau states that it continues to review and study various aspects of overdraft programs and anticipates releasing additional reports. Separately, in its May 2014 semi-annual rulemaking agenda, the Bureau indicated that pre-rule activities related to overdrafts are slated for release in February 2015 and "might include disclosures or address specific acts or practices."
- In July 2014, the CFPB released a report, *Consumer Response: A snapshot of complaints received*, which presented an analysis of consumer complaints received by the CFPB between July 2011 and June 2014. The report indicates the most common complaints associated with Bank Accounts and Services were related to account management (45 percent of complaints, including opening, closing, or ongoing management), and consumer specifically complained about confusing marketing materials, denials, fees, and statements. Problems associated with low funds balances, such as bounced checks, overdraft and late fees, and credit reporting issues, accounted for 13 percent of these consumer

complaints, and cited an institution's ability to exercise discretion when assessing fees and also fees resulting from the order of transaction processing. .

- In its Spring 2014 *Semi-Annual Report to Congress*, released May 2014, the CFPB acknowledged that it is considering whether regulations are warranted to address issues related to overdraft practices, including "concerns about whether the overdraft costs on consumer checking accounts can be anticipated and avoided." In an earlier *Semi-Annual Report to Congress* (released March 2013), the CFPB suggested some consumers may consider overdrafts to be among their options for small dollar, short-term credit needs along with credit cards, payday loans, instalments loans, and loans from pawn shops. The CFPB added that consumers may have difficulty comparing these options because there is no standard approach to comparing their relative costs.

[FDIC](#)

In May 2014, a variety of law firms reported on guidance issued by the Division of Depositor and Consumer Protection at the Federal Deposit Insurance Corporation's (FDIC) Kansas City Regional Office on the *Fees Associated with Extended Overdrafts* in response to an observed increase in fees associated with continuous (or extended) overdraft or negative balance. The guidance cautions banks to review their overdraft programs, "particularly any extended overdraft and negative balance fees," and to conduct testing to ensure that the fees charged consumers are consistent with their program and the disclosures made to consumers, evaluating the disclosures from the perspective of a "reasonable consumer." Also noted for consideration were the assessment of fees based on business or calendar days, overdrafts that occur over weekends, the timing of the decision to assess a fee, and the process to notify a customer of the overdraft. The FDIC indicates some institutions have been cited for violations of the unfair or deceptive acts or practices (UDAP) provisions in Section 5 of the *Federal Trade Commission Act* for disclosures and practices related to the imposition of extended overdraft fees.

[Other Reports](#)

Earlier this summer, The Pew Charitable Trusts released a report on bank overdraft practices. The report, *Overdrawn – Persistent Confusion and Concern About Bank Overdraft Practices*, presents the findings from a survey on the checking account overdraft experiences of more than 8,000 checking account holders. The findings are similar to the findings in the CFPB's two studies with some additional highlights:

- More than half of overdrafters do not recall opting-in to overdraft coverage;
- More than half of the respondents indicated their most recent overdraft event resulted in multiple penalty fees, including extended overdraft fees;
- More than 80 percent of the respondents say their bank did not warn them that a transaction would overdraw their account before completing the transaction; and
- Approximately 68 percent of respondents that had experienced an overdraft said they would prefer a transaction to be declined rather than to pay an overdraft fee.

Based on the report findings, The Pew Charitable Trusts recommended the CFPB:

- "Require financial institutions to make overdraft programs safer and more transparent by ensuring that consumers understand their options for overdraft coverage."
- "Prohibit the practice of transaction reordering that maximizes overdraft fees and ensure that fees are reasonable and based on the actual cost to the bank of providing the service."

Commentary

Regulation E is garnering heightened attention from federal regulatory agencies, especially with regard to the fees associated with overdrafts and negative balances, and deposit account charge-offs. The attention is driven in part by the growing focus on consumer protection and UDAP (and the CFPB's UDAAP authorities (unfair, deceptive, or abusive acts or practices) under the *Consumer Financial Protection Act*) in addition to the increasing complexities related to electronic transactions (e.g., disclosures, overdrafts, fees, fraud). These issues are many and broad and expected to be ongoing. Financial institutions are encouraged to reassess their deposit account practices, including overdrafts, negative balances, and charge-offs in light of this enhanced attention and the potential for regulatory actions that may be forthcoming. Further, it is unlikely that regulatory interests in this regard will stop with overdrafts and financial institutions should anticipate that regulatory activity related to deposit products will increase overall.

Though actively evaluating checking account overdrafts, it is not yet clear whether the Bureau will look to issue guidance or rules in this area. Likely, the Bureau will use its UDAAP authorities to, at a minimum, ensure that the features of opt-in coverage are clearly conveyed (i.e., disclosed) to consumers, as well as to minimize the variability of overdraft programs as identified in its studies. As the CFPB stated in its White Paper, "...it is likely that the variations we observe are attributable, at least in substantial part, to differences in other practices and policies among institutions."

Financial institutions should specifically look to proactively review their overdraft programs giving consideration to the findings in the two CFPB reports as well as other regulatory and industry materials. Particular attention should be given to assessing whether the information provided to consumers concerning overdraft services is clear "from a reasonable consumer's perspective" and to testing that overdraft fees are charged in a manner that is consistent with the materials provided to consumers. Banks should also review the policies in their overdraft programs that might raise UDAAP concerns in application, such as the process by which the fees are assessed, the basis for assessments (business or calendar days), the disclosures addressing overdrafts that occur over weekends, the timing of the decision to assess a fee, and the process to notify a customer of an overdraft.

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