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Remarks before the
Consumer Federation of America’s 34th Annual Financial Services Conference
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“Reforming Overdraft Programs to Empower and Promote Financial Health”

Good afternoon. I’m honored to be with you for the Consumer Federation of America’s 34th Annual Financial Services Conference. I’m grateful to Jack Gillis for inviting me to join this important gathering of consumer advocates and thought leaders.

The Problem

Today I am going to talk about bank overdraft practices, but I want to start by anchoring my remarks in what matters most: trust.

Banking rests on trust. During the pandemic, banks of all sizes maintained operations and stepped up to help their communities by working with impacted borrowers and facilitating government assistance programs like the Paycheck Protection Program (PPP). Actions like these gave customers the sense that banks had their backs.

When banking contributes to income and wealth inequality, however, that trust erodes. As we all know, it is expensive to be poor. And a significant part of that expense comes from the products and services offered by banks themselves. As the Brookings Institution has noted recently, “The existing system is regressive (reverse Robin Hood), creating structural barriers and elevating costs to those on the lower end

of the income spectrum, while simultaneously showering benefits to those on the upper end.”¹

How can this regressive system be eliminated? Financial inclusion and banking access are necessary, but not sufficient. The details matter. Banking deposit account services need to be structured so that they improve customers’ financial capabilities *and* are priced to be low to no cost. While this is often the case for upper-income bank clients, it is too often not true for lower income customers.

Traditional bank overdraft programs are a significant part of this problem. Last week, the Consumer Financial Protection Bureau (CFPB) issued a report analyzing overdraft and non-sufficient fund (NSF) fees.² In 2019, banks earned \$15.5 billion on such fees.³ By definition, these fees are being paid by those bank customers who are the most financially vulnerable, i.e., those with low deposit balances.

Of course, the easiest way to eliminate overdraft fees would be to eliminate overdrafts. Some banks, like Ally, are doing this, and many banks offer basic accounts, such as Bank On accounts, which do not allow overdrafts and as such make it impossible for customers to incur overdraft fees. While this prevents harm, it can also limit financial capacity. For those living paycheck to paycheck, the flexibility offered by low- to no-cost overdrafts can empower them to pay their bills on time, avoid high-cost alternatives, and improve their credit profile. Therefore, our goal should be to

¹ Brookings Institution, “[Can fintech improve health?](#)” (September 2021).

² An NSF fee is the fee charged when a check or other payment transaction is presented but cannot be covered by the balance in the account.

³ Consumer Finance Protection Bureau, “[Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#)” (December 2021).

improve people’s *financial health*—i.e., their ability to spend, save, and borrow so that they are empowered rather than hindered.⁴

Reforming banks’ overdraft programs holds the promise of achieving this goal. OCC staff recently concluded a review and have identified attributes of responsible and fair overdraft programs, including building on the recent pioneering reform efforts at banks like PNC and Capital One. Before discussing the contours of such reforms, though, I think it helps to put overdrafts into historical context.

Historical context

Overdraft programs were created in the 1990s after banks began offering free checking. Notably, overdrafts were intended as a consumer convenience *for infrequent and limited use* to cover checking account shortfalls. Both banks and banking regulators discouraged consumers from relying on overdraft protections as recurring short-term credit. A hefty fee for the overdraft service was intended to serve as a deterrent to routine use.

Over time, however, routine and recurring use of overdraft programs became the norm rather than the exception. Some customers began to view overdrafts as a form of short-term liquidity. One survey found that 32 percent of those using overdrafts saw the service as a way to borrow when short on cash.⁵ Recurring use by a relatively small set of financially vulnerable account holders also emerged as an issue. A 2017 CFPB study

⁴ Financial Health Network, [Financial Health Pulse: 2021 U.S. Trends Report](https://www.finhealthnetwork.org), [finhealthnetwork.org](https://www.finhealthnetwork.org). The report found 30 percent of households with incomes less than \$30,000 were “financially vulnerable” because they consistently struggle to spend, save, borrow, or plan in ways that allow them to be financially resilient and seize any opportunities that do become available to them.

⁵ The Pew Charitable Trusts, “[Overdraft Does Not Meet the Needs of Most Consumers](#)”, Figure 7, “1 in 3 Overdrafters View Overdraft as a Way to Borrow,” December 2017.

found that nine percent of account holders using overdrafts had used it more than 10 times per year, accounting for 91 percent of all overdraft fees paid.⁶ Nearly 20 percent of those frequent overdraft users identified in the CFPB study did not have a credit score, suggesting that at least some of the recurring usage may have been driven by consumers' challenges in obtaining traditional forms of credit.⁷ In addition, a 2016 Pew Charitable Trust survey found that the consumers who most frequently paid overdraft fees tended to have lower incomes than the U.S. population as a whole.⁸

From a bank earnings perspective, the overdraft and NSF fee income proved attractive. In the late 1990s and early 2000s, as interest rates fell, many banks turned to fee-based, non-interest-income-generating activities to make up for declining profit margins on lending.⁹ Overdraft and NSF fees filled the gap. Over time, many banks raised NSF fees, while simultaneously developing what came to be known as “overdraft protection programs.” As the programs proliferated from 1998 to 2008, the average overdraft fee rose by more than one-third from \$21.52 to \$28.95.¹⁰ By 2015, when more detailed data became widely available, overdraft and NSF fees had grown to comprise the

⁶ Consumer Financial Protection Bureau, “[Data Point: Frequent Overdrafters](#),” p.13, Table 1, August 2017.

⁷ Ibid., p. 25, Table 3

⁸ The Pew Charitable Trusts, “[Heavy Overdrafters, A Financial Profile](#),” p. 4, Figure 3, April 2016. The survey defines heavy overdrafters as those who reported paying more than \$100 in annual overdraft fees during the previous year.

⁹ The Pew Charitable Trusts, “[Consumers Need Protection from Excessive Overdraft Costs](#),” December 2016, Figure 1 “Fee Revenue Grew As Interest Income Decreased,” and Figure 2 “Service Charges Have More Than Doubled During the Past 3 Decades.”

¹⁰ Statista, “[Average bank overdraft fee in the United States from 1998 to 2020](#).” The graphic indicates the average bank overdraft fee increased from \$21.52 in 1998 to \$28.95 in 2008.

majority of account fee income for banks, more than double aggregate maintenance and ATM fees, resulting in what the CFPB calls “overdraft reliance.”¹¹

The increased usage of overdrafts coincided with increases in consumer complaints filed with the OCC and other regulators. Consumers and consumer organizations, including the Consumer Federation of America, called for reforms and, in some cases, filed lawsuits. Key concerns centered on unclear disclosure of terms and conditions, automatic enrollment, and deceptive marketing.

Regulators responded. In 2005, the financial regulatory agencies issued joint guidance¹² regarding responsible disclosure for, and administration of, overdraft protection programs. The guidance focused on safety and soundness considerations, legal risks, and best practices for marketing overdraft protection.

The guidance also highlighted prudent risk management practices, including establishing customer eligibility standards and overdraft limit criteria and monitoring accounts for excessive usage, including potentially suspending the service if necessary. To address legal risks, the guidance highlighted that overdraft programs need to fully comply with applicable Federal laws and regulations, including Section 5 of the Federal Trade Commission Act prohibitions on unfair or deceptive practices.

In 2009, under rulemaking authority for the Electronic Funds Transfer Act, the Federal Reserve Board strengthened consumer protections under Regulation E by

¹¹ CFPB, “[Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#)” (December 2021).

¹² The final 2005 interagency “Joint Guidance on Overdraft Protection Programs,” was issued February 24, 2005, and was published in the *Federal Register* in Volume 70, Number 36.

requiring financial institutions to obtain a customer’s one-time “opt-in” as affirmative consent before charging overdraft fees on debit card or ATM transactions.¹³

While collectively these efforts sought to limit consumer overdraft use and the most harmful overdraft practices, overdraft use has continued to grow in recent years.

Since 2009, there have been numerous class action lawsuits settled and enforcement actions taken over banks’ administration of overdraft programs. The Consumer Federation of America and other consumer groups have worked tirelessly to highlight abusive practices and advocate reforms. And legislation to restrict overdraft fees has been proposed and considered by Congress. Notwithstanding these efforts, until recently, progress on reforming banks’ overdraft programs was slow, with overdraft and NSF fees in aggregate remaining quite stable from 2015 until the pandemic.¹⁴

The Opportunity

Today, overdraft programs are changing and the outlook for meaningful reform is promising. I believe this is due to several factors.

First, the disproportionate impact of the pandemic on vulnerable communities, coupled with the social protests following the murder of George Floyd, highlighted the unsustainability of gross and persistent inequality. A desire to help and be part of the solution emerged across a wide swath of communities, businesses, and organizations.

Second, competition from fintechs increased with the accelerated digitization of banking due to the pandemic and the ubiquity of smart phones. The proliferation of

¹³ The final rule was published in the *Federal Register* on November 17, 2009, and amended 12 CFR 205, “Electronic Fund Transfers (Regulation E),” to address overdraft protection programs.

¹⁴ CFPB, “[Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#)” (December 2021).

nonbank options to make and receive payments, borrow money, and park cash has changed the supply and demand dynamics for banks and their depositors.

Third, renewed public attention on overdrafts this year reinvigorated the issue, putting it back on the front burner for banks and for regulators. A Brookings report on the safety and soundness risks of excessive reliance on overdraft revenues¹⁵ and congressional questioning of large bank CEOs¹⁶ and agency heads, including me,¹⁷ put overdraft practices back in the public spotlight.

Fourth, several banks decided, on their own, to reform their overdraft programs to make them more pro-consumer. For instance, earlier this year, PNC launched its “Low Cash Mode” product, providing customers with real-time alerts, the ability to manage the timing of payments, and at least a 24-hour grace period to cure and get overdraft fees waived. Just last week, Capital One announced that it was eliminating all overdraft and NSF fees and will continue to provide overdraft protection for free. Other large banks have been rumored to be considering modifications to their overdraft programs as well. A race to the top for the most pro-consumer overdraft program could help make it less expensive to be poor and demonstrate to consumers that the banking system has their backs.

¹⁵ Brookings Institution, “[A few small banks have become overdraft giants.](https://www.brookings.edu/articles/a-few-small-banks-have-become-overdraft-giants/)” ([brookings.edu](https://www.brookings.edu)).

¹⁶ Refer to [Hearings, United States Committee on Banking, Housing, and Urban Affairs \(senate.gov\)](https://www.senate.gov/committees/committees-one/committee-on-banking-housing-and-urban-affairs/hearings) for a video of the full committee hearing, “Annual Oversight of Wall Street Firms” (May 26, 2021). At the hearing, Senator Elizabeth Warren and JPMorgan Chase CEO Jamie Dimon engaged in an exchange over overdraft fees charged to customers during the pandemic.

¹⁷ Refer to [Hearings, United States Committee on Banking, Housing, and Urban Affairs \(senate.gov\)](https://www.senate.gov/committees/committees-one/committee-on-banking-housing-and-urban-affairs/hearings) for a video of the full committee hearing, “Oversight of Regulators: Does our Financial System Work for Everyone?” (August 3, 2021).

Finally, with the recent release of two research papers on overdraft reliance by banks, the CFPB announced that it would be “taking action to restore meaningful competition to this market.”¹⁸ The OCC has been working with the CFPB on this issue and we will strive to coordinate to ensure there are effective guardrails and backstops in case the momentum for overdraft reform stalls. As noted earlier, while prior regulatory efforts may have prevented harmful overdraft practices from proliferating further, they did not result in material and sustained improvements. New rules and the credible threat of enforcement actions for harmful practices should help ensure that at least some progress will be made in the future, bank reform efforts notwithstanding.

Financial Health and Overdrafts

Policy discussions about financial inclusion and overdrafts have tended to center on: (A) reducing the unbanked population, and (B) eliminating overdraft fees. A natural solution for both is the Bank On account. Bank On’s National Account Standards set a baseline standard for safe, affordable, and appropriate accounts that meet the needs of low-income consumers, particularly those outside of the financial mainstream.¹⁹ All banks should offer Bank On accounts or the equivalent.

With that said, it is helpful to remember that banking access is necessary but may not be sufficient to enable people to reach their financial potential. And limiting overdrafts may limit the financial capacity for those who need it most.

¹⁸ Consumer Financial Protection Bureau, “[CFPB Research Shows Banks’ Deep Dependence on Overdraft Fees.](#)”

¹⁹ See [About – Bank On \(joinbankon.org\)](#).

As such, policymakers, advocates, and banks should also consider using *financial health* as an additional yardstick by which to assess banking access, products, and services. While there are many different measures of consumer financial health,²⁰ they generally address the ability of individuals and families to meet their day-to-day obligations and needs, absorb and recover from financial shocks, and pursue long-term savings goals. Responsible and fair financial products can empower consumers, putting them in control of their finances and making them more resilient when faced with the unexpected.

Through a financial health lens, traditional overdraft programs are, at best, a mixed bag. With their high cost and ease of accidental use, combined with the opacity of real-time balances and posting order impacts, these traditional programs take away consumer control and put financial resilience at risk.

The OCC staff's review of overdrafts has identified several features of bank overdraft programs that could be modified or recalibrated to support financial health. These include banks

- requiring consumer opt-in to the overdraft program.
- providing a grace period before charging an overdraft fee.
- allowing negative balances without triggering an overdraft fee.
- offering consumers balance-related alerts.
- providing consumers with access to real-time balance information.
- linking a consumer's checking account to another account for overdraft protection.

²⁰ Refer to Financial Health Network's [Consumer Financial Health Study](#), and [Financial Health Pulse: 2021 U.S. Trends Report](#).

- collecting overdraft or NSF fees from a consumer's next deposit only after other items have been posted or cleared.
- not charging separate and multiple overdraft fees for multiple items in a single day and not charging additional fees when an item is re-presented.

Recent overdraft reform efforts from banks like Capital One and PNC align with these reforms. Promoting consumer financial health through responsible and fair products can be good business. The practices associated with these products are often consistent with sound risk management, and designing and offering these products can help financial providers better serve their existing customers and acquire new ones.

Conclusion

I look forward to more OCC-supervised banks adopting overdraft practices that promote consumer financial health and greater income and wealth equality. To this end, the OCC will share the principles we believe will help banks implement responsible overdraft programs that benefit financially vulnerable consumers. We will also continue to encourage banks to offer other innovative products that address growing consumer demand for small-dollar, short-term credit in responsible, safe, sound, and financially healthy ways.

Thank you, and I am happy to take your questions.