

January 16, 2018

By electronic delivery to:
www.regulations.gov

Bureau of Consumer Financial Protection
Attention: PRA Officer
1700 G Street, NW
Washington, DC 20552

Re: Notice and Request for Comment Regarding “Web-Based Quantitative Testing of Point of Sale/ATM (POS/ATM) Overdraft Disclosure Forms”; 82 Fed. Reg. 52,894 (Nov. 15, 2017) [OMB Control Number: 3170-XXXX]

Dear PRA Officer:

The American Bankers Association¹ (ABA) appreciates the opportunity to submit its comments in response to the Bureau of Consumer Financial Protection’s (Bureau) initiation of a request for approval under the Paperwork Reduction Act² (PRA) to conduct a nationwide web-based survey of 8,000 individuals as part of the Bureau’s study of overdraft protection services (Proposed Survey).³ Through this request, the Bureau proposes to survey consumers on their comprehension and decision-making⁴ in response to the four prototype overdraft disclosure forms that the Bureau released in August 2017 (Prototype Disclosures or the Prototypes).⁵

ABA opposes the Proposed Survey and urges the Bureau not to proceed with its submission to the Office of Management and Budget (OMB) for approval. In 2009, the Board of Governors of the Federal Reserve System amended Regulation E to require that a consumer affirmatively consent—or “opt in”—to overdraft services before a bank could impose a fee for an overdraft resulting from a point-of-sale debit card or ATM transaction (Opt-In Rule).⁶ Through the amendment, the Federal Reserve also adopted an opt-in disclosure form, the Model Form A-9 (Model Form).

¹ The American Bankers Association is the voice of the nation’s \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

² Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

³ Notice and Request for Comment, Web-Based Quantitative Testing of Point of Sale/ATM (POS/ATM) Overdraft Disclosure Forms, 82 Fed. Reg. 52,894 (Nov. 15, 2017).

⁴ Supporting Statement A, Web-Based Quantitative Testing of Point of Sale/ATM (POS/ATM) Overdraft Disclosure Forms 1 (OMB Control No. 3170-XXXX), <https://www.regulations.gov/document?D=CFPB-2017-0039-0004>.

⁵ Bureau of Consumer Fin. Prot., Potential Redesigns of Model Overdraft Disclosure Form (released Aug. 4, 2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_overdraft-model-forms-prototypes.pdf.

⁶ Final Rule, Amendment to Regulation E, 74 Fed. Reg. 59,033 (Nov. 17, 2009) (codified at 12 C.F.R. pt. 205).

Despite devoting the past five years to studying overdraft, there is no evidence that consumers lack information necessary to make informed choices regarding the use of overdraft services. To the contrary, the Bureau’s research underscores the fact that the 2009 amendments to Regulation E have empowered customers to make informed and responsible account management choices when seeking, declining, or changing overdraft coverage. This regulatory and pro-consumer structure has encouraged the banking industry to design a variety of sustainable and transparent overdraft protection options.

In our view, the Bureau is proposing to put the cart before the horse. In the absence of a finding that customers are unable to make informed choices regarding overdraft under the Model Form, we do not believe that it is necessary—or fiscally responsible—for the Bureau to spend additional taxpayer funds testing potential alternatives to that Form.

In addition, the Proposed Survey fails the PRA’s central test for any proposed information collection as it will not “maximize the utility of information” collected in order to “strengthen decisionmaking” by the Bureau on the subject of overdraft.⁷ The Proposed Survey does not ask respondents why they use overdraft, whether they have ever opted out of overdraft, and what other options they have to address short-term liquidity needs if access to overdraft were restricted—questions ABA has urged the Bureau to address since the Bureau published its Request for Information on overdraft practices in February 2012. Moreover, the Bureau has not proposed to survey frequent users of overdraft—i.e., those individuals who regularly use overdraft services and thus know the product best. Survey responses by customers with little-to-no prior use of overdraft can be expected to reflect respondents’ *opinion* of overdraft—not real-life experience with the product.

Today, bank overdraft practices fairly and transparently respond to consumer needs. The imposition of additional regulatory obligations on overdraft may stifle innovation and customer choice in overdraft product design, limit the availability of overdraft services for those who value these services the most, and potentially push these consumers to look for options in the “informal” financial sector. We urge the Bureau not to impose additional regulatory barriers to consumers’ access to this important service.

The Bureau has not demonstrated that consumers lack information necessary to make informed choices

The Bureau has spent more than five years studying overdraft and produced three separate reports examining different aspects of overdraft: (1) a “white paper of initial data findings” of its study of certain large banks’ overdraft programs;⁸ (2) a “data point” on consumers’ use of

⁷ 44 U.S.C. § 3501(2) & (4).

⁸ BUREAU OF CONSUMER FIN. PROT., CFPB STUDY OF OVERDRAFT PROGRAMS: A WHITEPAPER OF INITIAL DATA FINDINGS (June 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.

overdraft at that same group of large banks;⁹ and (3) a second “data point” on frequent users of overdraft.¹⁰ Despite this investment of time and taxpayer money, the Bureau has not demonstrated that consumers lack information necessary to make informed choices regarding use of overdraft. Without a finding that the existing Model Form is an impediment to informed consumer choice, the Bureau has no justification to spend an additional \$330,905 to test consumers’ understanding of four *new* Prototype Disclosures.¹¹

ABA surveys have shown that frequent overdraft users are well aware of the fees involved, the monthly and year-to-date fee information that is provided on their bank statements, and the fact that they may opt out of overdraft protection at any time. A 2013 ABA-sponsored survey by public opinion researcher Mark Mellman (2013 ABA Consumer Survey), found that 82% of frequent overdraft users know they will be charged a fee for overdrawing their account, 77% were aware that information about the amount of overdraft fees they have incurred is included on their bank statement, and as noted previously, 63% were aware that they are able to opt out of receiving overdraft protection at any time.¹² These findings strongly suggest that the existing Model Form disclosure is providing information necessary for bank customers to make informed decisions regarding their use of overdraft protection.

The Proposed Survey provides little, if any, utility because it does not ask why frequent users of overdraft use the product, whether they have ever opted out, or what alternatives they have for addressing short-term liquidity needs

A central purpose of the PRA is to “maximize the utility of information” collected by the Federal government” in order “to strengthen [government] decisionmaking.”¹³ ABA appreciates that the Bureau has initiated the process for seeking OMB approval for the Proposed Survey using the PRA’s standard clearance process. This process provides the public with two opportunities to comment on—and thus strengthen—the Survey and the utility provided by the data it generates.¹⁴ Since initiating its study of overdraft in 2012, the Bureau has failed almost entirely

⁹ BUREAU OF CONSUMER FIN. PROT., DATA POINT: CHECKING ACCOUNT ACCESS (July 2014), *available at* http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

¹⁰ BUREAU OF CONSUMER FIN. PROT., DATA POINT: FREQUENT OVERDRAFTERS (Aug. 2017), *available at* http://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf?utm_campaign=ABA-Newsbytes-080717-HTML&utm_medium=email&utm_source=Eloqua.

¹¹ Supporting Statement A, *supra* note 4, at 11.

¹² The Mellman Group, *Presentation of Findings from a Survey of 501 Frequent Users of Overdraft Services* 18 (Oct. 2013), *available at* <https://www.aba.com/Compliance/Mem/Documents/MellmanStudyUsersofOverdraft2013October.pdf> (hereinafter 2013 ABA Consumer Survey).

¹³ 44 U.S.C. § 3501(2) & (4).

¹⁴ The Bureau must proceed via rulemaking should it seek to modify the Model Form, and rulemaking requires use of the standard clearance process. We also note that the Bureau’s use of the standard clearance process to seek approval for the Proposed Survey is far superior to the approach taken by the Bureau when it released the Prototype Disclosures. Upon its release of the Prototypes, the Bureau asked the public to “[t]ake a look for yourself and tell us what you think” about the Prototypes, and provided no cost/benefit analysis or other analysis besides a blog entry. Blog Post, Gregory Evans & Gary Stein, Bureau of Consumer Fin. Prot., *Know Before You Owe: We Are Designing*

to examine those aspects of overdraft that would best inform the Bureau’s decisionmaking in this area: why do frequent users use the product and how would those users address their short-term liquidity needs if access to overdraft were restricted? Unfortunately, the Proposed Survey continues the Bureau’s practice of avoiding these key questions. The Proposed Survey provides little, if any, utility to the Bureau’s decisionmaking on overdraft and thus should not be submitted to OMB for approval.

Since the Bureau began studying overdraft in 2012, ABA and other parties have provided feedback and suggestions for additional data development and analysis.¹⁵ We have identified questions of central importance that the Bureau should ask as it pursues its study of overdraft:

1. Why do consumers use overdraft protection?
2. What do consumers understand about their ability to opt in *and out* of overdraft?
3. To what extent do consumers who have opted in to overdraft exercise their right to opt out of the product?
4. Why do consumers choose overdraft over alternative forms of short-term liquidity?
5. What are consumers’ options for covering their short-term liquidity needs if overdraft access is limited?

In suggesting these questions, we have urged the Bureau to focus on why *frequent users* of overdraft use the product. Survey responses of the general customer population will reflect customer opinion about overdraft services from individuals with little to no experience with the product. Instead, the Bureau should ask: what are the practices and attitudes of those customers who know overdraft products the best?

Yet, the Proposed Survey does not seek answers to these critical questions or target frequent users of the product. Instead, the Proposed Survey asks respondents—regardless of their experience or familiarity with overdraft—which types of transactions will be paid into overdraft if the respondent opts in (or does not opt in) and the amount of the fee charged for the overdraft. No question on the Proposed Survey asks *why* the respondent would seek to have a transaction paid into overdraft or what the consequence would be for not paying a transaction into overdraft. No question asks whether the respondent, if opted in to overdraft, had ever opted out. Such data are important in assessing customer satisfaction with overdraft, as a customer’s decision *not* to opt out of overdraft strongly suggests that the customer is satisfied with the product.

New Overdraft Disclosure Forms, <https://www.consumerfinance.gov/about-us/blog/know-you-owe-we-are-designing-new-overdraft-disclosure-forms/> (Aug. 4, 2017). As ABA commented at the time, the Bureau’s informal request appeared to sidestep the PRA’s purposes and requirements designed to permit the public to provide meaningful feedback. Letter from Virginia O’Neill, Am. Bankers Ass’n, to Richard Cordray, Dir., Bureau of Consumer Fin. Prot. 6 (Aug. 22, 2017), *available at* <http://www.aba.com/Advocacy/commentletters/Documents/cl-OverdraftDisclosure-2017Aug.pdf> (hereinafter ABA 2017 Letter).

¹⁵ See, e.g., Letter from Richard Riese, Am. Bankers Ass’n, to David Silberman, Bureau of Consumer Fin. Prot. 8-9 (Oct. 7, 2013), *available at* <http://www.aba.com/Advocacy/commentletters/Documents/cl-Overdraft-CFPB-Whitepaper-10713.pdf>; ABA 2017 Letter, *supra* note 14, at 4-6.

In addition, the Proposed Survey does not ask what options, other than overdraft, respondents have for meeting short-term liquidity shortfalls. Responsible policymaking relating to overdraft must assess the impact potential regulation would have on customers' ability to meet short-term liquidity needs. However, the Proposed Survey makes no attempt to understand alternative short-term, small dollar credit options available to consumers and why consumers choose to access overdraft over available alternatives.

Instead of asking these essential questions, the Proposed Survey includes four questions on whether respondents would prefer to receive a certain amount of money today or a greater amount of money at a certain defined point in the future.¹⁶ These questions, taken from the field of behavioral economics, do not concern a customer's use of overdraft and thus do not increase the utility of a survey whose purpose is to understand customers' comprehension and decision-making regarding use of this specific product. These questions should be omitted from the Proposed Survey.

As mentioned, the Proposed Survey does not target frequent users of overdraft. The Bureau states that fewer than half of respondents, approximately 42 percent, "will have had an experience with overdraft"¹⁷ However, even a customer with "experience" with overdraft is not equivalent to a frequent user. When the Bureau first proposed this survey, over two years ago, we urged the Bureau to define "Regular User" as a consumer who has "accessed overdraft services at least seven times within a twelve-month period"¹⁸ We also urged the Bureau to define, as Regular Users, consumers who have "experienced seven *distinct overdraft events*," not seven overdraft transactions.¹⁹ We are disappointed that the Bureau continues not to recognize the importance of surveying Regular Users of overdraft and do not believe that survey responses from consumers with limited, or no, experience with overdraft will yield useful and reliable information to support policymaking.

Existing regulations empower consumers to make informed choices regarding use of overdraft services

Although improvements can be made to any model disclosure form, an agency must show the need for such improvements before expending resources to engage in rulemaking to promulgate changes to that form. The Bureau has not met that test with respect to the Model Form. In its

¹⁶ DRAFT Test Protocol and Form Testing Survey Questions: Quantitative Testing of Overdraft Disclosure Forms, Web-Based Quantitative Testing of Point of Sale/ATM (POS/ATM) Overdraft Disclosure Forms 7 (OMB Control No. 3170-XXXX), *available at* <https://www.regulations.gov/document?D=CFPB-2017-0039-0003>.

¹⁷ Supporting Statement B, Web-Based Quantitative Testing of Point of Sale/ATM (POS/ATM) Overdraft Disclosure Forms 2 (OMB Control No. 3170-XXXX), *available at* <https://www.regulations.gov/document?D=CFPB-2017-0039-0005>.

¹⁸ Letter from Jonathan Thessin, Am. Bankers Ass'n, to PRA Officer, Bureau of Consumer Fin. Prot. 9 (Oct. 30, 2015), *available at* <http://www.aba.com/Advocacy/commentletters/Documents/cl-OverdraftSurvey-2015Oct.pdf>.

¹⁹ *Id.* (emphasis in original).

ongoing study of overdraft, the Bureau has not demonstrated that consumers lack information necessary to make informed choices, as discussed in greater detail above. This result is unsurprising: the existing regulatory framework governing overdraft empowers customers to make informed and responsible account management choices when seeking or declining overdraft coverage that best fits their individual needs and life styles.

As discussed at the outset of this letter, amended Regulation E provides that depository institutions may not impose an overdraft fee for ATM and one-time, point-of-sale debit card transactions unless the customer expressly consents or “opts in” to the overdraft program (Opt-In Rule). During the rulemaking process, the Federal Reserve engaged in consumer testing of the model opt-in form to ensure that consumer consent to overdraft is informed and meaningful. Moreover, use of this form has helped ensure that the pricing of overdraft protection remains simple and transparent to consumers. The Model Form requires the disclosure of the fee charged for each overdraft transaction; any additional fees imposed if an account remains in overdraft status, if applicable; and whether there are any limits on the number of overdraft fees assessed. The Model Form also requires the disclosure of other alternatives the bank offers for covering overdraft transactions, including the statement that these alternatives “may be less expensive than our standard overdraft practices.”

Regulation E also establishes a safe harbor from liability for institutions that use the existing Model Form.²⁰ The regulation and its commentary significantly limit a bank’s ability to deviate from the Model Form in its own disclosure, demonstrating the Federal Reserve’s belief that the Model Form facilitated informed customer consent and thus should be the standard of use by individual banks.²¹ Moreover, because the regulation itself conditions a bank’s coverage under the safe harbor on use of a form “substantially similar” to the Model Form, a new rulemaking under the Administrative Procedure Act is necessary to modify that Form. The Bureau cannot modify the Model Form through non-rulemaking regulatory action and preserve access to the safe harbor.

In addition, the Federal Reserve amended Regulation DD in 2009 to require banks to provide consumers with clear disclosures on periodic statements of all overdraft fees and by requiring that institutions only disclose funds available for immediate use when disclosing automated account balances to a customer.²²

In sum, the Federal Reserve tested the Model Form, determined that use of the form results in informed customer consent, and requires use of the Form (or a substantially similar form) for a

²⁰ See Official Staff Interpretations, Regulation E, 12 C.F.R. § 205, app. A(1) (“The use of appropriate [model disclosure] clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the [Electronic Fund Transfers Act] provided the clauses accurately reflect the institution’s EFT services.”).

²¹ Regulation E, 12 C.F.R. § 205.17(d) (stating that an institution’s overdraft disclosure “*shall* be substantially similar to Model Form A-9 . . . and *may not contain* any information not specified in or otherwise permitted by this paragraph”) (emphasis added).

²² 12 C.F.R. § 230.11.

bank to be covered under the safe harbor. The Bureau has put forth no evidence to challenge the effectiveness of these findings and conclusions.

The market for overdraft services has evolved significantly since the Opt-In Rule was promulgated in 2009

Since the Federal Reserve promulgated the Opt-In Rule in 2009, the market for overdraft services and bank overdraft practices has evolved significantly. As predicted in a 2010 ABA Overdraft Task Force Report, in the years since implementation of the Opt-In Rule, banks have evaluated their legal obligations and the markets they serve and have used this information to design or redesign their own overdraft programs. The process has yielded a variety of overdraft protection programs that fairly and transparently respond to customer needs, promote free choice, and encourage competition.²³ A 2013 ABA survey of bank overdraft practices, for example, found that 73% of responding banks waive fees when a transaction results in a negative balance that is within a *de minimis* threshold, and 68% impose a cap on total overdraft fees per day, which limit the number of fees incurred.²⁴

Moreover, consumers today have an increasing number of opportunities to use alternative products should they so choose, to avoid overdrafts, or to be sure to have an overdraft product whose features they have selected. Options to manage accounts to avoid overdrafts include signing up for low-balance alerts and monitoring balances online and using mobile applications. A 2016 report by the Federal Reserve found that 62 percent of users of mobile banking services with smartphones reported using their phone to check account balances or available credit before making a large purchase.²⁵ Of those who checked their balance or available credit, 50 percent reported that they decided not to buy an item because of the amount of money in their bank account or the amount of their available credit.²⁶ Consumers can—and do—use the information available to them to make informed financial decisions, including the decision to rely upon overdraft protection.

Additionally, over the past several years, many banks have adopted policies to post transactions in low-to-high order or otherwise changed their posting order. These changes have in many instances reduced the number of overdrafts incurred by customers, the number of fees charged,

²³ Am. Bankers Ass'n, *A New Framework for Overdraft Program Compliance* (Aug. 2010), available at http://www.aba.com/archive/Regulatory_Proposal_Archive/Documents/NewFrameworkforOverdraftCompliance2010.pdf.

²⁴ Am. Bankers Ass'n, *Bank Overdraft Practices Survey: Summary of Survey Results 10* (Oct. 2013), available at <http://www.aba.com/Compliance/Mem/Documents/ABABankODSurvey2013Oct.pdf>.

²⁵ Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2016*, at 25 (Mar. 2016), available at <https://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201603.pdf>.

²⁶ *Id.*

and the number of frequent users of overdraft.²⁷ These data should inform the Bureau’s consideration of the need for additional regulation of overdraft.

Additional restrictions on overdraft could cause people to look for options in the “informal” financial sector

The Bureau’s consideration of the need for additional regulation of overdraft should be driven by a fundamental question: where will regular users of overdraft turn for emergency funds if they no longer have access to overdraft protection? The findings of the Bureau’s 2017 overdraft research report, “Data Point: Frequent Overdrafters”²⁸ (Data Point) show that available options would be limited. Many of the frequent users identified in the Data Point have lower credit scores, are more likely to be “credit constrained,” and are less likely to have a general purpose credit card than infrequent or non-users of overdraft.²⁹ In the absence of alternatives to overdraft for these customers, the imposition of additional regulatory obligations on overdraft would be unwise and harmful to those who rely on the product to meet short-term liquidity needs.

The Data Point’s findings are consistent with the 2013 ABA Consumer Survey, which asked respondents to review a list of possible alternatives and to indicate whether they would be likely to use each one. Their responses underscored the fact that by restricting access to overdraft protection, consumers would have significantly fewer viable options. Only 21% of regular users stated they might rely on a home equity loan, and 18% might use a credit card advance. Moreover, frequent users report few acceptable choices outside the banking system; fewer than 10% expressed willingness to go to nonbanking lenders. The alternative identified by a majority, or 56%, of frequent users was turning to borrowing from family or friends, a challenging solution for a variety of reasons.³⁰

The demand for short-term, small dollar credit is significant, real, and cannot be wished or regulated away. According to a study by the Federal Reserve, nearly half of Americans—46%—could not cover an emergency expense that costs \$400 without selling a possession or borrowing money.³¹ People of all walks of life rely upon overdraft and other short-term credit products to meet small dollar account shortfalls. Reducing access to overdraft protection will force people to make greater use of other, less preferred alternatives. Absent compelling evidence of knowledge gaps or that consumers tend to use the product irrationally—neither of which has been

²⁷ See G. MICHAEL FLORES, AN ASSESSMENT OF OVERDRAFT PROTECTION BY AMERICAN CONSUMERS 26 (Apr. 2017), available at <http://www.aba.com/Advocacy/Documents/SmallDollarWhitePaper2017Apr.pdf>.

²⁸ BUREAU OF CONSUMER FIN. PROT., DATA POINT: FREQUENT OVERDRAFTERS (Aug. 2017), available at http://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf?utm_campaign=ABA-Newsbytes-080717-HTML&utm_medium=email&utm_source=Eloqua.

²⁹ *Id.* at 5.

³⁰ 2013 ABA Consumer Survey, *supra* note 12, at 27.

³¹ BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2015, at 22 (May 2016), available at <http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.

demonstrated during the Bureau’s five-year study of overdraft—ABA believes that people should be assumed to be the best judges of what is in their best interests and should remain free to choose.

Any assessment of the need for additional regulation of overdraft must also consider the impact that such restrictions would have on the availability of “free” checking accounts and no-minimum balance requirements. The availability of such accounts has opened access to the banking system to millions of new customers. However, these “free” accounts, under pressure from the application of the Durbin Amendment to interchange revenue, declined from 76 percent of checking accounts in 2009 to 39 percent of checking accounts in 2012, according to a survey by Bankrate,³² demonstrating that their availability is sensitive to regulatory restrictions on related deposit account costs. Additional regulation of overdraft services could reduce availability of such accounts even further. As fewer consumers can access free and no-minimum checking accounts, many may resort to informal sources or rely instead on more expensive and less convenient non-bank check cashers and money transmitters.

The Bureau should use supervision and enforcement—not rulemaking—to address individual banks’ overdraft practices

Despite the widespread use of disclosure forms, the existing regulatory regime produces substantially different opt-in rates across financial institutions. This may be the result of different markets served, different products offered, or some other reason.

If the Bureau’s supervision and enforcement work indicates that certain institutions are inappropriately steering customers to opt in to overdraft, the Bureau should use its supervisory and enforcement authorities to address the perceived problem on an institution-by-institution basis. That approach permits a response to be tailored to address the specific institution’s practice identified as problematic. The Bureau should not use rulemaking to address such an institution-specific issue, as any rulemaking will impact—and potentially curtail access to—the entire pool of consumers who use and value overdraft.

Conclusion

ABA opposes the Proposed Survey and urges the Bureau not to submit it to OMB for approval. During its study of overdraft, the Bureau has not shown that consumers lack information necessary to make informed decisions on their use of the overdraft product. In the absence of such showing, the Bureau has not met the logical preconditions for pursuing the testing of new prototype disclosures. The wisdom of, “if it is not broken, then don’t fix it,” comes to mind.

³² Claes Bell, *Checking Account Fees Rise But Less Steeply*, BANKRATE.COM, Sept. 30, 2013, <http://www.bankrate.com/finance/checking/checking-account-fees-rise-but-less-steeply-1.aspx>.

In addition, the Proposed Survey provides little, if any, utility to the Bureau's decisionmaking regarding overdraft. The Bureau does not ensure that frequent users of overdraft—those consumers who know the product best—will be included in the Proposed Survey's pool of respondents. The Bureau also fails to ask essential questions about respondents' use of the overdraft product, such as whether respondents have ever opted out of overdraft, or whether respondents have alternatives to address short-term liquidity needs if overdraft is restricted.

The existing regulatory framework empowers consumers to make informed choices regarding use of overdraft and should not be disturbed absent compelling evidence to the contrary. The 2009 amendment to Regulation E has encouraged evolution in the market for overdraft services, and banks today respond to consumer needs effectively and transparently by offering expanded choices for overdraft and alternative products.

Additional regulation of overdraft is unnecessary and potentially harmful, as it could curtail access to overdraft for consumers who have come to rely on the product. We urge the Bureau not to impose new regulatory obligations on banks' provision and consumers' use of this valued product. To the extent that the Bureau identifies a practice at a certain institution that the Bureau believes to be problematic, the Bureau should use its supervisory and enforcement authorities—not rulemaking—to address that institution's practice.

Thank you for your consideration of this comment.

Sincerely,



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