November 3, 2017

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

Re: CFPB's Data Point “Frequent Overdrafters” and Prototypes of Overdraft Disclosure

On behalf of America’s credit unions, I am writing regarding the Consumer Financial Protection Bureau’s (CFPB or Bureau) August 2017 overdraft report and related overdraft disclosure prototypes. The Credit Union National Association (CUNA) represents America’s credit unions and their 110 million members.

**CFPB’s Recent Releases Concerning Overdraft**

In August of this year, the CFPB released a report, “Data Point: Frequent Overdrafters” (2017 Data Point),¹ along with prototypes of *Know Before You Owe* overdraft disclosure (prototypes).²

The 2017 Data Point focuses on frequent overdrafters—consumers who attempted to overdraw their accounts more than 10 times in a 12-month period. The study found that 9% of accounts are frequent overdrafters and they incurred 79% of overdraft fees. CUNA agrees that these numbers are worth exploring and supports the CFPB’s intention to provide consumers with appropriate information to help reduce the likelihood they will be taken advantage of by an unscrupulous lender. Furthermore, we support the CFPB’s inquiry into whether the consumers highlighted in the 2017 Data Point knowingly utilized overdraft services. Based on our outreach, the vast majority of credit union members that use overdraft services choose to do so and would like to preserve the option of using the

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services into the future. We would also like to share that, based on a CUNA survey, chronic use of/reliance on overdraft protection services by credit union members is virtually non-existent. Of the roughly one-third of all members that have ever actually used overdraft protection, only 2% report using it once a month or more over the preceding year. (This 2% represents just .6% of all credit union members.)

In addition to the 2017 Data Point, the CFPB concurrently released four overdraft disclosure prototypes. The prototypes are intended to assist the CFPB in modifying the current model opt-in form for overdraft coverage. The prototypes use a one-page design intended to provide consumers with an easy-to-understand disclosure of the costs and benefits of debit card and ATM overdraft before deciding whether to opt in.

CUNA’s Concerns with the CFPB’s Overdraft Initiatives

CFPB’s Inquiry into Overdraft Practices Should Recognize Credit Unions’ Role

Credit unions are member-owned, not-for-profit financial cooperatives that operate for the purpose of promoting thrift, providing credit at competitive rates, and providing other financial services to their member-owners. As the only consumer-owned cooperatives in the financial marketplace, credit unions have a tradition of protecting consumer interests, and CUNA has consistently been a strong proponent of appropriate and sufficient safeguards and disclosures for consumer financial products and services, including those that relate to deposit accounts. Because credit unions are owned by their members, they have traditionally worked hard to minimize fees on products and services, including regarding overdraft programs.

Credit unions offer overdraft programs as a convenience and accommodation to their members. As the Bureau proceeds with its inquiry into whether changes are needed for overdraft protection programs, we urge it to engage in a thorough analysis to ensure it has obtained all the relevant information. Further, we encourage the CFPB to continue to study overdraft so it can gain a better understanding of the benefits consumers derive from this product, and the differences between the overdraft products offered by credit unions and other financial institutions.

We recognize there are unscrupulous lenders that, in their quest to increase profits, conduct business in ways that are harmful to consumers, including in the area of overdraft. We urge the CFPB to focus its resources on addressing those bad actors. Such an approach is more efficient, and ultimately effective, than blanket policy or regulatory changes that inappropriately apply to those financial institutions—which is the vast majority of all financial institutions—that are not predatory toward consumers.

2017 Data Point Does Not Utilize Credit Union Information

The 2017 Data Point follows a related study by the CFPB in 2014, and white paper in 2013, all three of which relied on the same dataset. The dataset is comprised of transaction-level data from January 2011 to June 2012, provided by a small number of
large banks. These are banks covered by the CFPB’s supervisory authority and do not include credit unions, thrifts, or banks with assets under $10 billion.

We are very concerned with the CFPB’s approach to gathering information for its studies on overdraft. We strongly disagree with the CFPB’s reliance on limited, dated information from a single type of financial institution as a basis for pursuing changes that will affect thousands of institutions of varying type and millions of consumers.

It is important that policy decisions rely on accurate information, which necessitates the use of timely information. The CFPB should ensure it has an accurate picture of institutions’ current processes and practices, as financial institutions are constantly innovating and updating their operations. While it may be of some value, data collected in 2011 and 2012 is unlikely to be representative of transactions occurring in 2017. Increased competition in the financial services space, together with the rapid pace of technological advancements, force institutions to continually evaluate and update their services and the way they employ such services. Thus, we urge the Bureau, which describes itself as a data driven agency, to refrain from instituting any policy decisions related to overdraft—or otherwise—based on years-old data.

Further, the data comes from only a handful of large banks. The CFPB points out that the data from these banks is representative of over 40 million accounts. However, since the CFPB is trying to understand the overdraft-related practices of financial institutions, it is inappropriate to utilize such a small sample size. Of course, the CFPB is ultimately concerned with the impact of overdraft practices on consumers, but unless the CFPB intends to limit its regulatory and/or supervisory efforts to those few banks, it is critical that the CFPB utilize representative data when making decisions affecting all financial institutions.

In the 2017 Data Point, the CFPB acknowledges that “as the sample comes from a small number of large banks, it cannot be considered fully representative of the checking account market as a whole.” We fully agree with this statement. However, the CFPB goes on to state that, “[n]evertheless, based on our market observations, we believe it is likely to be similar to what one would observe at any institution that offers similar checking account and overdraft products.” We disagree with this sweeping generalization. As described above, the core philosophy of a credit union is much different than that of a for-profit bank. Again, we believe it is inappropriate to assume the practices of a few large banks are representative of the entire financial services industry. As such, any efforts by the CFPB to apply a one-size-fits-all approach in the area of overdraft would be wholly misguided.

**CFPB’s Solicitation of Public Comments on the Prototypes**

The CFPB has released the draft overdraft disclosure forms as prototypes. As such, the CFPB has chosen to not follow the Administrative Procedure Act’s provisions related to

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3 CFPB Data Point, at 11.
public notice and comment required of formal rulemakings. The CFPB announced the prototypes via press release and blog post. The blog post solicits input from the public on the prototypes, directing commenters to email the CFPB their opinions of the forms.\footnote{CFPB Blog, Know Before You Owe: We are designing new overdraft disclosure forms (Aug. 4, 2017), available at https://www.consumerfinance.gov/about-us/blog/know-you-owe-we-are-designing-new-overdraft-disclosure-forms/.

We appreciate the Bureau’s effort to obtain public input on these forms. To ensure the Bureau has adequate information, it is important that the comments received be representative of all consumers and financial services providers. In that connection, we ask the Bureau, based on the quantity and quality of input received thus far, to decide whether it should employ additional means of soliciting comments from the public, such as via publication in the \textit{Federal Register}.

\textit{Overdraft Disclosure Prototypes}

We appreciate the CFPB’s initiative to examine whether improvements can be made to the model overdraft disclosure form. We believe it is critical that consumers have accurate, understandable information necessary to inform financial decisions. As the CFPB continues its study of overdraft practices, we expect it to learn that many consumers that utilize overdraft services do so knowingly and intentionally. Credit unions are certainly not in the business of steering their members toward financial products or services that are intentionally overly-complex and needlessly difficult to fully understand their associated costs.

While the CFPB has not indicated why exactly it is pursuing changes to the model overdraft form, we assume it is because it believes the current model is too complex or lacks certain information necessary for consumers to make informed decisions. If such assumption is correct, it appears that the CFPB believes consumers would not decide to utilize overdraft services, at least not to the degree indicated in their study, if the overdraft opt in forms provided to consumers were less complex or contained additional, pertinent information. Regardless of whether such assumptions are accurate, we question the basis for the CFPB’s pursuit of “improvements” to the model disclosure form.

If the CFPB determines it necessary to proceed with revisions to the model overdraft disclosure form, there is an issue that should be addressed. We noticed with each of the prototypes that they lack language stating that the decision to pay an overdraft, for customers that have opted in to overdraft protection, is at the institution’s discretion. The current model form states: “We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.” It is important that consumers understand that the payment of an overdraft is up to the provider. Thus, we urge the Bureau to ensure a revised model form includes such explicit language.

Model forms from the CFPB and other agencies are important compliance tools for financial institutions. Further, model forms that provide a safe harbor for compliance purposes can be an invaluable tool for credit unions and others. Thus, if the CFPB
determines it is necessary to make changes to the model overdraft disclosure form, we urge it to provide that use of the form constitutes compliance.

**Conclusion**

On behalf of America’s credit unions and their 110 million members, thank you for the opportunity to share our views regarding the CFPB’s recent initiatives in the area of overdraft services. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743.

Sincerely,

Luke Martone  
Senior Director of Advocacy & Counsel