FEDERAL LEGISLATIVE BRIEF

Overdraft Protection Services

Summary

On August 1, 2018 Senators Cory Booker (D - NJ) and Sherrod Brown (D–OH) introduced the Stop Overdraft Profiteering Act of 2018 (S. 3343). The legislation would ban overdraft fees on ATM withdrawals and debit card transactions, while placing limits on fees for checks and recurring payments. It would also mandate that financial institutions post transactions in a manner that minimizes overdraft and nonsufficient (NSF) funds fees.

Specific provisions of the legislation include:

- Prohibits on overdraft fees for ATM and one-time debit transactions
- Mandatory three-day waiting period after opening a new checking account to offer overdraft protection
- Prohibits financial institutions from charging more than one overdraft fee per month and no more than six overdraft fees in any single calendar year for check and recurring bill payment transactions
- Limits on check and recurring bill payment overdraft fees to an amount that is reasonable and proportional to the financial institution's costs in providing the overdraft coverage
- Mandates that financial institutions post transactions in a manner that minimizes overdraft and nonsufficient funds fees
- Requires financial institutions offering overdraft protections to provide reason for suspending or terminating overdraft protection
- Prohibit reporting of overdraft activity to consumer reporting agencies

The bill was referred to the U.S. Senate Committee on Banking, Housing and Urban Affairs.

Impact on credit unions and their members

In 2009, the Board of Governors of the Federal Reserve System published a final rule providing formal consumer protection for overdraft and NSF fees on ATM and one-time debit card transactions. Regulation E (now under the BCFP's rulemaking authority) states that consumers must "opt-in" for these services, and financial institutions must provide them with reasonable opportunity to affirmatively consent. Within this framework, credit unions have implemented this valuable service for members, typically at lower cost than other providers (credit unions average \$26–\$30) and structured to protect their interests.

Credit unions use these types of non-interest income to support a variety of critical purposes in line with the industry's core mission. Michigan credit unions are particularly active in financial literacy — 88% provide financial literacy programs, with 58% providing specialized education programs for their members that teach how to avoid overdrafts. As not-for-profit cooperatives, credit unions don't retain profit beyond capital requirements, so these fees are also channeled into lower rates, and low-cost or free accounts, products and services.

The principal benefit of these services accrues to the members who have chosen to use them. Rather than face a declined charge, monetary penalties, and other legal exposure for overdrawing on an important transaction, they can pay a small fee to carry on with their business — which can be mundane, or related to a critical health, professional or family expense. Without the option to use these services, members could be forced to seek help from more volatile sources or less consumer friendly providers, like payday lenders. Without the availability of these services, members would also eventually see increased rates and fees, fewer products and services and a sharp decline in financial literacy assistance programs through their credit union.

MCUL Position

Current overdraft protection services are well-disclosed, voluntary arrangements that protect the member from higher costs and inconvenience should a point of purchase transaction be declined. Greatly restricting or prohibiting overdraft and courtesy pay services will actually harm consumers, especially low-to-moderate income credit union members. The current regulatory framework allows for members to be in control throughout the process, and they may opt out of the service at any time.

While MCUL and CUNA strongly encourage legitimate consumer protection, S. 3343 misconstrues the nature and purpose of these valuable services. With its heavy-handed prohibitive approach, it would cause significant harm, direct and indirect, to credit union members.