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March 2, 2012

Ms. Jane Gell
Senior Counsel and Special Advisor, Research, Markets & Regulations Division
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20006

RE: CFPB Docket No. CFPB-2011-0039, Streamlining Inherited Regulations (Comment on request for information)

Dear Ms. Gell,

The Pew Safe Checking in the Electronic Age Project, a part of the Pew Health Group, is dedicated to data driven research on deposit accounts. The Project raises awareness, builds partnerships with industry, and advocates for policies that reduce risks and allow Americans to responsibly manage their checking accounts.

Introduction

Checking accounts are the most common financial product, used by 90 percent of adult Americans.¹ These products are regulated by a series of laws and regulations that have grown over time to cover an array of requirements. The Truth in Savings Act (TISA) is one of the key laws regulating checking accounts by requiring transparency of account terms and conditions to potential customers. Specifically, TISA mandates that the Consumer Financial Protection Bureau (CFPB) require financial institutions to provide disclosures so that consumers can compare accounts.² However, as currently structured, TISA's disclosure requirements are so broadly written that disclosure is deficient. Consequently, the CFPB must streamline the current TISA regulations so that the Act's intended purpose of providing meaningful disclosure can be achieved.

After conducting extensive research on checking accounts and disclosure, Pew published a report in April 2011, *Hidden Risks: The Case for Safe and Transparent Checking Accounts*.³ In this report, we recommend policy changes for improving the industry. Based on our research and analysis, we recommend that the CFPB streamline TISA's disclosure regulations to require that financial institutions provide new, potential, and current accountholders with a supplementary summary disclosure box of key terms, conditions, and fees.⁴ In addition, Pew recommends that the CFPB require institutions to use standardized language when describing overdraft services in marketing and disclosure documents. Our research and analysis show that this can be effectively done and with minimal burden to financial institutions. Indeed, many national and regional financial institutions have already adopted a form of Pew's disclosure box, including Chase, Inland Bank, North Carolina State Employees' Credit Union (NCSECU), and Pentagon Federal Credit Union (Pentagon FCU).

1. The CFPB should streamline TISA by requiring all financial institutions to provide consumers with a short, clear, and understandable summary of key terms, conditions, and fees. (12 C.F.R. §§1030.3, .4, and .11).

Background

In 2010, Pew’s Safe Checking in the Electronic Age Project collected data from the ten largest depository banks in the country.⁵ Pew found that out of the 265 distinct accounts offered online by these banks, the disclosure documents provided were extensive, with a median length of 111 pages.⁶ These pages were often spread out in dense text over several documents, including account agreements, fee schedules, and addenda. Furthermore, important information about account fees, overdraft policies, and dispute resolution were often found in different places within the documents. These lengthy disclosures made it difficult to find important account terms, conditions, and fees.

Based on our findings, Pew developed a one-page supplementary disclosure box that summarized and displayed important information in an easy-to-read format. As a model, Pew used the concise disclosure box required for credit card solicitations (often referred to as the “Schumer Box”).

Pew then tested drafts of the disclosure box with six focus groups and received positive reviews. The focus groups revealed that the current lengthy and dense disclosures were generally unread and that a simple and convenient reference box was very much wanted. In addition, national polling showed that requiring banks to provide a one-page summary of information about checking accounts’ terms, conditions, and fees is seen as a positive change by 78 percent of Americans. Only 4 percent of those polled said that this requirement would be a negative change. The support for this recommendation has large margins across income and age groups as well.⁷ More information about our policy recommendation, focus group testing, and polling data can be found in Pew’s fact sheet, which is attached [here](#).

Analysis

Banks and credit unions have been receptive to the idea and implementation of Pew’s disclosure box. Several, including Chase, Inland Bank, NCSECU, and Pentagon FCU, have *voluntarily* adopted a form of Pew’s disclosure box. In addition, Pew has been working with several other financial institutions which are in the process of developing summary disclosures.

The fact that financial institutions have voluntarily adopted the disclosure box quickly and without incurring burdensome costs is notable. For instance, NCSECU was able to create their disclosure box in a single day and shortly thereafter posted it on their website. Presently, they are in the process of offering it in their branch locations.

While voluntary adoption is commendable and a significant step forward, it is not sufficient. Without rules that specify the format and content to be included in the summary disclosure box, consumers will not be able to easily compare the accounts offered at various financial institutions. In addition, mandatory adoption would ensure that all banks and credit unions provide clear, upfront disclosures to new, current, and potential accountholders.

Recommendation

The TISA regulations as currently constructed do not provide a framework to ensure meaningful disclosure to potential or current checking accountholders.⁸ Unlike the rules implementing the Truth in Lending Act (TILA), which provide specific guidance and requirements for disclosures, TISA has no significant requirements for layout, length, or clarity.⁹ The Federal Reserve's staff interpretations on disclosure requirements, which are no longer in force, failed to include any meaningful rules for the structure of the disclosures and left too much room for variation.¹⁰ A requirement that banks provide a uniform, supplementary summary of their key terms, conditions, and fees needs to be implemented as soon as possible to streamline TISA so that its original intent for disclosure can be achieved.

- 2. The CFPB should streamline TISA regulations by requiring the use of standard language to describe overdraft penalty fees, overdraft transfer fees, and extended overdraft fees (12 C.F.R. §§1030.2, .8, .11).**

Background

Pew's research found that the ten largest banks used differing terms to describe overdraft penalty fees, overdraft transfer fees, and extended overdraft penalty fees.¹¹ Pew defines overdraft penalty plans as a service whereby short-term advances are made for a fee by the bank to cover an overdraft. Yet the banks studied in *Hidden Risks* used seven different terms to describe such plans. Additionally, banks used six separate terms for overdraft transfer plans, which Pew defines as a service whereby a bank performs a transfer from another account or plan, either a savings account, credit card, or overdraft line of credit, to pay for any overdrafts. Lastly, for extended overdraft penalty fees, defined as charges that apply when a customer's account remains overdrawn for a specified number of days, there were four distinct terms used. When Pew re-collected the data in October 2011, we found that this variation was relatively unchanged and was not limited to just banks, but credit unions as well.¹²

Analysis

Currently, in the regulations implementing TISA, there are no requirements that disclosures and other marketing materials use standardized language. Consumers are prevented from understanding the costs and risks of overdraft when multiple terms are used to describe the same practice. The failure to require standardized terms is exactly the type of change the CFPB should be streamlining. While Pew's research only covered the largest banks and credit unions, it is likely that there is variation among all financial institutions. A requirement that terms be defined the same way by all financial institutions will enable consumers to better understand what services they are signing up for and will better enable them to compare accounts.

Recommendation

The CFPB should streamline the regulations implementing TISA in order to define the terms: "Overdraft Penalty," "Overdraft Transfer," and "Extended Overdraft Penalty." Furthermore, the CFPB should require that all disclosures that pertain to overdraft plans or fees use only these standardized terms.¹³ The compulsory use of defined terms would not be burdensome for institutions if they are given ample time for implementation and it would help provide real transparency in the overdraft market.

We thank the CFPB for this opportunity to comment on the streamlining of TISA regulations and look forward to continuing to work with you. As always, we are available to discuss these comments or any other aspect of our work at any time.

Sincerely,



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Attached: Policy Recommendation Fact Sheet

¹ Brian K. Bucks, Arthur B. Kennickell, Traci L. Mach & Kevin B. Moore, “Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances,” Federal Reserve Board - Division of Research and Statistics, February 2009, available at <http://www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf>.

² Truth in Savings Act, 12 U.S.C.S. §4301(b).

³ Pew Health Group, “Hidden Risks: The Case for Safe and Transparent Checking Accounts” (April 2011), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe_Checking_in_the_Electronic_Age/Pew_Report_HiddenRisks.pdf.

⁴ A report detailing our 2011 data collection will be published this spring.

⁵ Pew Health Group, “Hidden Risks: The Case for Safe and Transparent Checking Accounts” (April 2011).

⁶ When we repeated this data collection in 2011 for the 12 largest banks and the 12 largest credit unions in the U.S, our data came to the same conclusion. Checking account disclosures are still very long and do not provide adequate means for consumers to understand their accounts or compare the terms of one financial institution with another.

⁷ Seventy-six percent of households earning less than \$40,000 annually supported, as did 81 percent of those making between \$40,000-\$75,000, and 78 percent of households earning more than \$75,000 indicated support. Eighty-one percent of accountholders age 18-34 support; 79 percent of accountholders age 35-49 support; Seventy-seven percent age 50-64 supported; and seventy-three percent age 65 and over supported. For more information on this survey, see www.pewtrusts.org/news-room_detail.asp?id=85899362358.

⁸ See 12 C.F.R. §§1030.3, .4, .11.

⁹ Id.; See also 12 C.F.R. §1026.5.

¹⁰ Truth in Savings, Final Rule, 57 Fed. Reg. 43,337 (Sept. 21, 1992).

¹¹ When Pew re-collected the data in October 2011, we found that this had not changed and was not limited to just banks, but credit unions as well.

¹² When we collected data for the 12 largest banks and 12 largest credit unions in October 2011, we found that both groups used several different names for these terms.

¹³ The regulations should require that banks use only these terms when describing any overdraft “fees” or “plans.”