



INDIANA COMMUNITY ACTION POVERTY INSTITUTE

Research and Public Policy

Testimony before the Senate Financial Institutions Committee

1/23/2024

Greetings Senator Baldwin and Members of the Committee

Thank you for the opportunity to provide public testimony today. My name is Erin Macey, and I am director of the Indiana Community Action Poverty Institute. Our research and policy advocacy focuses on promoting the financial well-being of all Hoosiers. We take a special interest in financial practices that disproportionately harm low-income consumers.

Overdraft fees in particular have come under scrutiny lately, with many arguing that they are essentially an under-regulated form of short-term credit. Approximately 23 million households pay overdraft fees in any given year and these fees disproportionately come from low-income consumers: according to research from the non-profit Financial Health Network only 4% of Financially Healthy households with checking accounts reported paying an overdraft or NSF fee in 2022, compared with 46% of Financially Vulnerable households. Yet these fees currently make up a quarter or a third of some financial institutions' revenue. Beyond an overall unease with this, both the ethics and legality of particular overdraft practices have been called into question, such as "advance positive, settle negative" transactions. Here's a scenario:

Today, I buy several small things using my debit card...a bus ticket, a cup of coffee and a Twix from the snack bar, parking, and a gallon of milk on the way home. My account shows I have enough money and even appears to “reserve” the money...and the next day my rent payment goes through and “settles” more quickly. I’m charged five overdraft fees instead of one.

Finding legal help to challenge harms like these that may be repeated across many people is both important but also challenging. It is also one of the only ways consumers who have been hit with improper overdraft fees can get their money back.

I’m encouraged to hear that practices are changing. In May of last year, National Credit Union Association Chair Todd Harper told Indiana Credit Union Members that “In my view, overdraft fee programs that allow for authorizing positive and settling negative, permit the charging of multiple re-presentment fees, ~~and~~....repeated NSF fees are antithetical to the purpose of credit unions, detrimental to members, and inconsistent with the credit union system’s statutory mission of meeting the credit and savings needs of consumers, especially those of modest means...”

The Chair of NCUA went on to argue, “De-emphasizing consumer financial protection in credit unions and at the NCUA carries real consequences, such as serious harm to consumers, who could end up paying more for financial products and services, being denied a mortgage to buy a home, and being blocked from wealth building.” We would expand this argument to say that this body, too, should be thinking about the role of consumer financial protection in preventing harm to Hoosiers and promoting financial well-being. And a statute of limitations for holding banks and credit unions accountable is a consumer protection – by providing accountability, it both prevents harm and offers restitution when harm has occurred. And while

it's rare for 95% of people to agree on anything, they agree that if a bank has charged them a fee they didn't agree to, they should have their day in court (research from Pew Research Center).

Finally, I'd like to note that this body changed the statute of limitations from 10 years to 6 in 2021. In that hearing, the Indiana Credit Union League testified "we believe that the law and the precedent from the Indiana Supreme Court case has clearly put deposit accounts into the 6-year statute..." and the Bankers Association concurred. (I believe, to be exact, they said 'ditto.').

A shorter statute of limitations means fewer consumers have remedies when they are unfairly charged by their bank and credit union. And where consumers have been wrongfully harmed, they deserve their day in court and they deserve to be made whole.

NOTES:

Federal Deposit Insurance Corp said banks can fix the problem with overdraft practices by 'ensuring that any transaction authorized against a positive available balance does not incur an overdraft fee, even if the transaction later settles against a negative available balance.'"