cfpb Consumer Financial Protection Bureau

CFPB Sues TCF National Bank for Tricking Consumers Into Costly Overdraft Service

Bank Obscured Fees, Adopted Loose Definition of Consent to Preserve Overdraft Revenue

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WASHINGTON, D.C. – Today the Consumer Financial Protection Bureau (CFPB) is suing TCF National Bank for tricking consumers into costly overdraft services. Banks cannot charge overdraft fees on one-time debit purchases and ATM withdrawals without a consumer's consent. The Bureau alleges that TCF designed its application process to obscure the fees and make overdraft seem mandatory for new customers to open an account. The CFPB also believes that TCF adopted a loose definition of consent for existing customers in order to opt them into the service and pushed back on any customer who questioned the process. Today's lawsuit seeks redress for consumers, an injunction to prevent future violations, and a civil money penalty.

"Today we are suing TCF for tricking consumers into costly overdraft services in order to preserve its bottom line," said CFPB Director Richard Cordray. "TCF bulldozed its way through protections against automatic overdraft enrollment and then celebrated its unusual sign-up success. With today's action, we are standing up for consumers' right to understand and choose what services they receive."

TCF National Bank, headquartered in Wayzata, Minn., operates approximately 360 retail branches across Minnesota, Wisconsin, Illinois, Michigan, Colorado, Arizona, and South Dakota. Among its various products, TCF offers checking accounts and charges about $35 every time a consumer overdrafts by spending or withdrawing more money than is available.

With the advent and growth of debit cards, overdraft was transformed from an occasional courtesy which banks extended to avoid bouncing checks, to a significant source of industry revenues. In 2010, federal rules took effect that prohibited depository institutions from charging overdraft fees on ATM and one-time debit card transactions – such as swiping a debit card at a store – unless consumers affirmatively opted in. If consumers don't opt in, banks may decline the transaction, but can't charge a fee. The "opt-in" rule affected both new accounts and existing accounts.

As described in the Bureau's complaint, TCF relied on overdraft fee revenue to a greater degree than most other banks its size and recognized early on that the opt-in rule could negatively impact its business. In late 2009, it estimated that approximately $182 million in annual revenue was "at risk" because of the opt-in rule. It began consumer testing that same year. Through this testing, the bank determined that the less information it gave consumers about opting in, the more likely consumers would opt in.

The Bureau's complaint alleges that TCF's strategy also consisted of bonuses to branch staff who got consumers to sign on. For example, in 2010, branch managers at the larger branches could earn up to $7,000 in bonuses for getting a high number of opt-ins on new checking accounts. After the bank phased out the bonuses, certain regional managers instituted opt-in goals for branch employees. Staff had to achieve extremely high opt-in rates of 80 percent or higher for all new accounts. While the bank's official policy was that an employee could not be terminated for low opt-in rates, many employees still believed they could lose their job if they did not meet their sales goals.

The Bureau alleges that the bank's strategy worked and that by mid-2014, about 66 percent of the bank's customers had opted in, a rate more than triple that of other banks. According to the Bureau's complaint, the chief executive officer of the bank even named his boat the "Overdraft." TCF's senior executives were so pleased with the bank's effectiveness at convincing consumers to opt in that they had parties to celebrate reaching milestones, such as getting 500,000 consumers to sign up.

Today's lawsuit alleges that TCF was in violation of the Electronic Fund Transfer Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, the CFPB alleges that the bank:

- **Tricked new customers into believing optional overdraft was mandatory and obscured fees:** The bank determined through consumer testing that if new customers were asked to opt in at the same time they were being asked to agree to other mandatory terms and conditions of a new account, the opt-in rate more than doubled. So it placed the opt-in decision immediately after a series of mandatory items the consumer had to agree to in order open the account, rather than at the time they received the mandatory notice about their opt-in rights. The bank then provided branch employees with scripts that did not explain that opting in was optional or that it amounted to giving the bank permission to authorize transactions that would result in fees. Most consumers fell into the rhythm of initialing the terms of the agreement and signed on.

- **Adopted a loose definition of consent to opt in existing customers:** TCF also ran a campaign to get customers who already had an account to opt in. TCF branch employees called those existing customers using a script the bank had provided. Instead of asking consumers whether they wanted to have their overdrafts covered for a $35 charge, staff was instructed to ask customers whether they wanted their "TCF Check Card to continue to work as it does today?" Many consumers did not understand that by choosing to have their debit card "continue to work as it does today," they were granting the bank permission to authorize transactions and charge them overdraft fees that they would otherwise not have to pay.

- **Pushed back on consumers who challenged opting in by using emotionally charged hypotheticals:** TCF consistently instructed its staff not to "over explain" the terms and conditions of its opt-in program. If new or existing consumers challenged or questioned opting in, the bank instructed its staff to sell the product by suggesting a hypothetical situation, such as an emergency with high stakes where they would desperately need access to money.

The suit seeks redress for consumers, injunctive relief, and penalties. The Bureau's complaint is not a finding or ruling that the defendants have actually violated the law.

A copy of the complaint is available at: http://files.consumerfinance.gov/f/documents/201701_cfpb_TCF-National-Bank-complaint.pdf

A CFPB consumer advisory on overdraft issues, first released in 2015, can be found at: http://files.consumerfinance.gov/f/201504_cfpb_consumer-advisory_overdraft.pdf

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

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