

March 30, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Dear Secretary Johnson:

We, the undersigned civil rights, labor, consumer, housing and community groups, write to thank the Federal Reserve Board for bringing attention to abusive overdraft practices while urging you to choose the far stronger opt-in proposal.<sup>1</sup> For a rule addressing fee-based overdraft to adequately protect consumers, *it must at a minimum require institutions to obtain consumers' affirmative consent*. An opt-out arrangement will do little to alter the status quo.

Currently, institutions generally enroll consumers in their most expensive overdraft programs automatically. Under an opt-out arrangement, institutions could continue to do so, and the burden would rest entirely with consumers to *unsubscribe*. Instead, institutions should be required to obtain consumers' affirmative consent before covering overdrafts for a fee.

Overdraft fees on debit card purchases and ATM withdrawals cost consumers \$7.8 billion per year. For every \$1.00 borrowed through a debit card overdraft, the consumer pays \$1.94 in overdraft fees. Yet, as the Board notes in its proposal: “[T]he consequence of not having overdraft services for ATM and one-time debit card transactions is to have a transaction denied with no fees assessed.” The consequence of coverage—to the tune of \$34 per transaction—clearly exceeds the consequence of having a transaction denied.

Consumer preferences about overdraft coverage for debit card purchases are overwhelmingly clear: approximately 80 percent would rather have the transaction denied than have it covered for a fee, whether the transaction is for \$5 or \$40. Moreover, of the overwhelming majority who want a choice about whether their debit card and ATM transactions are covered, *80 percent would prefer opt-in over opt-out*. We urge the Board to listen to what consumers have clearly said they want and prohibit overdraft fees on debit card and ATM transactions absent consumers' express consent.

In addition to choosing the far stronger opt-in requirement, the Board should take prompt action to require a cost of credit disclosure for overdraft coverage under the Truth in Lending Act by creating specific disclosures for this product under Regulation Z. It should also immediately address manipulative clearing practices by prohibiting institutions from posting transactions in

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<sup>1</sup> Several of the undersigned groups are submitting separate, more specific comments as part of this process. This letter is intended to convey our united request for the Board to require institutions to obtain consumers' affirmative consent before enrolling them in a fee-based overdraft program.

an order that maximizes overdraft fees, as provided by H.R. 1456, the Consumer Overdraft Protection Fair Practices Act.

We commend the Board's proposal to prohibit fees for many overdrafts caused solely by debit holds. However, we are disappointed by the proposed limitations that would continue to allow these fees in some circumstances. We urge the Board to prohibit overdraft fees caused solely by debit holds in all cases—because consumers should never be required to pay an overdraft fee when they have not in fact spent more than the funds in their account.

We thank you again for the attention you have devoted to abusive overdraft lending, and we look forward to working with you on this important matter.

Sincerely,

ACORN

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Americans for Fairness in Lending (AFFIL)

Black Leadership Forum

Center for Responsible Lending

Chicago Consumer Coalition

Consumer Action

Consumer Federation of America

Consumer Federation of the SE

Consumers Union

Democratic Processes Center, Tucson, AZ

Dēmos: A Network for Ideas & Action

Florida Consumer Action Network

International Brotherhood of Teamsters

Kentucky Equal Justice Center

Kentucky Youth Advocates

Lawyers Committee for Civil Rights Under Law

National Association of Consumer Advocates

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low-income clients)

National Consumers League

Neighborhood Economic Development Advocacy Project, NYC

Opportunity Finance Network

Privacy Rights Clearinghouse

Public Citizen

Sargent Shriver National Center on Poverty Law

Service Employees International Union

U.S. PIRG

Virginia Citizens Consumer Council