

# Arizona Consumers Council

March 27, 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  
(via email to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov))

Re: Docket No. R-1343

Dear Secretary Johnson:

The Arizona Consumers Council submits these comments to the Federal Reserve Board in response to its request related to the proposed overdraft fee proposal that would amend Regulation E, which implements the Electronic Funds Transfer Act. The Arizona Consumers Council has been educating, protecting, and advocating on behalf of Arizona consumers for over 40 years. We appreciate the Federal Reserve's attention to this matter. The Council agrees generally with the comments submitted by the many consumers groups, and consumers themselves, but writes separately to emphasize these points.

The Arizona Consumers Council urges the Federal Reserve Board to adopt the "opt-in" proposal. This will ensure that banks and other institutions obtain consumers' consent to enroll them in overdraft programs, and that banks explain how their overdraft programs work. It will end of practice of banks automatically enrolling them in this high cost form of credit. The Federal Reserve should adopt the "opt-in" proposal, because the "opt-out" proposal does not represent a significant change from current policy, which permits banks to sign consumers up for this expensive form of credit without providing an explanation of how a bank's overdraft program works, and without giving consumers an adequate opportunity to decline such credit, or to choose other options.

Overdraft loans are a particularly insidious form of high cost credit, because consumers often do not know that they have been enrolled in such programs, and because banks reserve to themselves complete discretion in determining whether to pay or decline a particular transaction. An "opt-in" requirement will give consumers the

## Contacts

Leslie Kyman Cooper  
Executive Director  
Tel 602-399-6638  
[LeslieCooper@AzConsumer.org](mailto:LeslieCooper@AzConsumer.org)

Phyllis Rowe  
President Emeritus  
Tel 602-265-9625  
Fax 602-263-7465  
[PRowe5@cox.net](mailto:PRowe5@cox.net)

PO Box 1288  
Phoenix, AZ 85001

opportunity to decide whether use this form and credit, and if the proposed Model Consent Form is adopted, give consumers a better chance to understand what other, less-expensive overdraft protection options are available.

As the Federal Reserve noted in its request for comments, consumers have indicated an overwhelming preference for having a small charge declined, if a substantial fee will be incurred.<sup>1</sup> Research also indicates that consumers want to choose whether to accept overdraft protection, rather than having to decline to participate in such programs.<sup>2</sup> Importantly, the Federal Reserve's own research indicated that if consumers are given enough information, they can understand how overdraft coverage works, and the consequences of not having such coverage.<sup>3</sup>

In addition to supporting the adoption of an "opt-in" requirement for overdraft loans, we urge you to ensure that institutions, through a Model Consent Form, provide clear and understandable information about their overdraft programs, so that consumers can make informed decisions about what kinds of overdraft protection to use, and can compare offerings by different institutions. Finally, the Board should help consumers understand the cost of overdraft credit by creating specific disclosures for this product under Regulation Z of the Truth in Lending Act.

The Arizona Consumers Council thanks you for the opportunity to comment on these regulations, and for the time and attention you have devoted to the issue of high cost overdraft credit.

Sincerely yours,



Leslie Kyman Cooper  
Executive Director

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<sup>1</sup> See Leslie Parrish, *Consumers Want Choice on Overdraft Fees and Bank Options*, Center for Responsible Lending, April 16, 2008, available at <http://www.responsiblelending.org/issues/overdraft/reports/consumers-want-informed-choice-on-overdraft-fees-and-banking-options.html>.

<sup>2</sup> See, *Overdraft Fees and Opting In: A survey of consumer preferences*, Center for Responsible Lending, March 23, 2009, available at <http://www.responsiblelending.org/issues/overdraft/reports/overdraft-fees-and-opting-in-survey.html>.

<sup>3</sup> See Electronic Funds Transfers, Regulation E, Docket No. R-1343, 12 C.F.R. Part 205, Jan. 29, 2009.