

COMMENTS
of the
CENTER FOR RESPONSIBLE LENDING
and
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION
NATIONAL CONSUMER LAW CENTER

on
Proposed Rule to amend
Regulation DD
12 CFR Part 230

pursuant to
The Truth in Savings Act

Docket No. R-1315

July 18, 2008

VIA ELECTRONIC SUBMISSION

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

PART ONE: INTRODUCTION AND OVERVIEW

Introduction

The **Center for Responsible Lending**, along with **Consumer Federation of America**,¹ **Consumers Union**,² and the **National Consumer Law Center**,³ provide the following comments regarding the Federal Reserve Board’s proposed rule to amend Regulation DD pursuant to the Truth in Savings Act (TISA).

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a credit union and a non-profit loan fund.

For the past 28 years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans to low-income and minority families who otherwise might not have been able to purchase homes. Self-Help has provided over \$5 billion in financing to more than 60,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across the United States. Self-Help’s responsible lending practices keep its annual loan loss rate under one percent.

Since 2004, Self-Help has merged with three community credit unions that offer a full range of retail products,⁴ and it now services over 3,500 checking accounts and approximately 20,000

¹ **Consumer Federation of America** is a nonprofit association of some 300 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers’ interest through advocacy, research and education.

² **Consumers Union** is a nonprofit organization that advances the interests of consumers by providing information and advice about products and services and about issues affecting their welfare, and by advocating a consumer point of view. Consumers Union’s income is solely derived from the sale of Consumer Reports, its other publications and services, and from noncommercial contributions, grants, and fees. Consumers Union’s publications and services carry no outside advertising and receive no commercial support. Consumers Union’s Financial Services Campaign Team works to promote fair conditions in the consumer financial services marketplace. Consumers Union has been engaged in consumer credit and other financial services issues since its inception in 1936, and in consumer advocacy on these issues since the 1970s. Consumers Union filed shorter comments addressing some elements of this proposed rule on June 27, 2008. Those comments are posted at http://www.consumersunion.org/pub/core_financial_services/005850.html. Consumers Union is pleased to join in these more detailed and comprehensive comments.

³ **The National Consumer Law Center, Inc.** is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of sixteen practice treatises and annual supplements on consumer credit laws, including Truth In Lending, (6th ed. 2007) and Cost of Credit (3rd ed. 2005) as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers.

⁴ Self-Help merged with Wilson Community Credit Union and Scotland Community Credit Union in 2004 and with Cape Fear Community Credit Union in 2006.

other deposit accounts.⁵ It must comply with the National Credit Union Administration’s (NCUA) regulations on overdraft practices, and it must do so as a relatively small provider of retail services. Self-Help will also be required to comply, of course, with any recommendations made below if accepted. We have consulted with Self-Help in formulating these recommendations, and they are either already in place at Self-Help Credit Union or would be operationally feasible.

Self-Help does not have a fee-based overdraft program, and it denies debit and ATM transactions when the customer does not have sufficient funds. It is currently converting its retail locations, on a staggered basis, from batch processing – where all transactions are processed together twice daily – to on-line, real-time processing. It expects all locations to be converted by mid-2009. During this transition, if a debit card overdraft is inadvertently paid, Self-Help does not charge the customer a fee for covering the payment. Self-Help customers can apply for a line of credit of up to \$500, carrying an interest rate of 16 percent. Customers may also link their checking account to their savings account, and Self-Help charges a \$1 fee for each transfer from savings to checking.

We thank the Board for focusing its efforts on abusive overdraft practices. Many of our nation’s financial institutions are betraying the trust of their account holders by quietly replacing what was once an occasional accommodation with a system of high-cost, unsolicited overdraft loans that drive their consumers further into debt. Marketed as “overdraft protection,” in actuality, abusive overdraft lending protects only the banks’ ability to maximize fees while jeopardizing the financial stability of many of their customers. Rather than competing by offering lower cost, truly beneficial overdraft products and services, many financial institutions use misleading terms and opaque practices to lead borrowers to overdraw their accounts repeatedly and incur costly overdraft fees.

Institutions typically place consumers in an abusive overdraft loan program automatically when they open a checking account, ignoring research showing that consumers overwhelmingly want to choose whether or not they are enrolled. Then, banks use a number of unfair practices to fuel overdraft fee income. They routinely approve debit card point-of-sale and ATM transactions when an overdraft will result without notifying the customer of this possibility or asking permission to make this loan. They manipulate the order in which they clear transactions so that higher-dollar items are withdrawn first to maximize the number overdrafts. And they post debits as quickly as possible, while delaying for as long as possible making credits, such as deposits, available for use.

Their incentive? \$17.5 billion in revenue each year – almost \$2 billion more than institutions extend in the overdraft loans that trigger the fees, and close to half the total service charge revenue institutions collected in 2007.

⁵ These include traditional savings accounts, money market accounts, certificates of deposits, and individual retirement accounts.

Abusive overdraft loans are costly for everyone but are most destructive to people who are struggling to meet their financial obligations. For example, CRL recently found that seniors that depend primarily on Social Security income to cover living expenses pay over \$1 billion in overdraft fees each year.⁶ In a system hugely out of balance, too many of our banks and credit unions are collecting enormous fees from people who have nothing to spare, making them even less able to meet basic obligations.

As the average overdraft fee continues to increase, along with the number of times per day consumers can be charged a fee, the trend is toward more abuse, not less. And it will no doubt continue absent appropriate action by the Board, along with NCUA and the Office of Thrift Supervision (OTS) (collectively, the Agencies).

The Board's proposal to find that charging an overdraft fee without allowing a reasonable opportunity to opt out is an unfair or deceptive trade practice is a partial step in the right direction. Unfortunately, though, it will not make a substantial dent in the financial industry's increasingly abusive overdraft practices. And it could even make the current situation worse if it creates the impression that consumers have been given a choice, when in reality there is little possibility that it will provide consumers a meaningful opportunity to get out of the abusive program. A far superior reform would be to require institutions to give consumers the opportunity to make an affirmative choice among overdraft alternatives, rather than being automatically subscribed to the most expensive option and being burdened with unsubscribing if they don't want to participate. We will elaborate on our support for an opt-in arrangement over the Agencies' opt-out proposal in our comments on the Proposed UDAP Rule,⁷ to be submitted to the Agencies by August 4, and have included a sample opt-in form in these comments as well.

For purposes of these comments on the Proposed Rule to amend Regulation DD,⁸ however, we will primarily provide the Board with feedback in the event it chooses to proceed with its opt-out proposal. The recommendations we offer in Part Two are intended to make it as clear as possible to consumers that they have the option to opt out and that they can possibly save money by opting out, as well as make it as easy as possible for them to do so.

These recommendations are informed by three key realities about abusive overdraft lending that we describe in the remainder of this Part One. First, fee-based overdraft programs cause more harm than benefit, especially for those least able to recover from abusive overdraft fees. Second, consumers overwhelmingly prefer to have their transactions denied than be charged an easily avoidable overdraft fee. Third, institutions have an overwhelming incentive to maximize overdraft fees and therefore minimize the number of consumers who opt out.

⁶ See Leslie Parrish and Peter Smith, *Shredded Security: Overdraft practices drain fees from older Americans*, Center for Responsible Lending (June 18, 2008), available at <http://www.responsiblelending.org/pdfs/shredded-security.pdf> (last visited July 17, 2008) [hereinafter *Shredded Security*].

⁷ Proposed UDAP Rule, 73 Fed. Reg. 28904 (May 19, 2008).

⁸ Proposed Rule on Regulation DD, 73 Fed. Reg. 28739 (May 19, 2008) [hereinafter the Proposed Rule] (together with the Proposed UDAP Rule, collectively, the Proposed Rules).

For these reasons, if the Board does not adopt our strong recommendation to require opt-in, an opt-out rule designed to protect consumers must give them the opportunity to opt out early, often, and easily. It must also make consumers aware, in the most straightforward manner possible, of the potential costs involved in fee-based overdraft. Finally, it must be strong enough to at least partially counterbalance banks' incentive to continue to steer customers toward fee-based overdraft programs. Under an opt-out arrangement, Regulation DD can best hope to achieve this counterbalance by requiring disclosure that meaningfully conveys the cost of fee-based overdraft and the availability of cheaper alternatives. Although even if the Board were to adopt all our recommendations, an opt-out rule would still be inadequate to protect consumers.

I. The Harm to Consumers from Fee-based Overdraft Programs Outweighs the Benefits.

In their Proposed UDAP Rule, the Agencies themselves acknowledge that fee-based overdraft programs can cause substantial harm to consumers.⁹ The harm of these programs in fact dramatically outweighs their potential benefits. The \$17.5 billion consumers are charged by fee-based overdraft programs each year exceeds the \$15.8 billion institutions extend in credit for the related overdrafts.¹⁰ These figures translate to a cost of \$1.11 in fees for every \$1.00 in loans – clearly an exorbitant price for credit.¹¹ Debit card transactions, which are usually far smaller than the average overdraft fee, are the most common trigger of overdrafts. This is true not only for young adults, who we would expect to be frequent debit card users,¹³ but also for Americans aged 55 and over.¹⁴ Moreover, the large majority of overdraft fees are paid by repeat overdrafters who would be far better off with cheaper alternatives or having their transaction denied.

⁹ 73 Fed Reg. 28929.

¹⁰ For a discussion of these estimates and how they were calculated, see Eric Halperin and Peter Smith, *Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans*, Center for Responsible Lending, 13-14 (June 2007), available at <http://www.responsiblelending.org/issues/overdraft/reports/page.jsp?itemID=33341925> (last visited July 9, 2008) [hereinafter *Out of Balance*].

¹¹ Due to a loophole in the Regulation Z, overdraft loans have been exempted from required annual percentage rate (APR) disclosures. But the typical overdraft (a \$27 overdraft, triggering a \$34 fee, repaid five days later) carries an APR of over 13,000 percent. The contrast in the cost of fee-based overdraft versus an overdraft line of credit is stark: assuming an APR of 18 percent, a \$20 overdraft resulting in a \$34 fee not repaid for an entire month would cost the consumer about 30 cents.

¹³ Leslie Parrish and Peter Smith, *Billion Dollar Deal: Banks swipe fees as young adults swipe debit cards, colleges play along*, Center for Responsible Lending, 1 (Sept. 24, 2007), available at <http://www.responsiblelending.org/pdfs/billion-dollar-deal.pdf> (last visited July 12, 2008).

¹⁴ *Shredded Security*, *supra* note 6.

The average debit card overdraft is under \$17,¹⁵ yet it triggers an average fee of \$34. Consumers, then, are paying nearly \$2 in fees for every dollar of credit extended through debit card overdrafts.¹⁶ The Agencies have clearly noted the lack of benefit gained from being charged an overdraft fee for an ATM or point-of-sale transaction.¹⁷ While industry defends overdraft coverage of paper checks as a guard against merchant fees triggered by bounced checks, there is no analogous penalty with debit card and ATM transactions: they could easily be denied on the spot with no consequence at all. *There is no benefit gained, then, from what is already the most common trigger of overdraft fees.* And this most common and most expensive overdraft trigger will only become more common as debit card use continues to rise dramatically.¹⁸

Having a check covered for an overdraft fee may provide the benefit of avoiding a merchant fee for a bounced check, when such a fee is charged. But checks cause a small percentage of overdrafts, triggering only 27 percent of all overdrafts, and this percentage will shrink as debit cards climb. Check transactions that cause overdrafts are also relatively small. The average check purchase that triggers an overdraft is only \$60, causing an overdraft of only \$41, but again incurring an average fee of \$34.¹⁹

Account holders who overdraft repeatedly bear an overwhelming share of the high cost of overdraft fees. Two CRL surveys have found that 71 percent of overdraft fees were paid by only 16 percent of the people who overdrafted. Those consumers were more likely to be lower income, non-white, single, and renters when compared to the general population.²⁰ Our research

¹⁵ The average overdraft amount for debit card transactions is \$16.46. Eric Halperin, Lisa James, and Peter Smith, *Debit Card Danger: Banks offer little warning and few choices as customers pay a high price for debit card overdrafts*, Center for Responsible Lending, 25 (Jan. 25, 2007), available at <http://www.responsiblelending.org/pdfs/Debit-Card-Danger-report.pdf> (last visited July 15, 2008) [hereinafter *Debit Card Danger*].

¹⁶ Consumers pay \$1.94 in fees for every \$1 of credit extended. *Id.* In the Agencies' Proposed UDAP Rule, they have proposed prohibiting fees that consume over 50 percent of a credit line as an unfair practice. 73 Fed. Reg. 28923-24. If fees that exceed the amount of credit extended is unfair for credit cards, why isn't it unfair for overdraft credit as well?

¹⁷ 73 Fed Reg. 28929. The Agencies state, "[T]here are no similar benefits for ACH withdrawals and point-of-sale transactions," but we believe they intended to write "[T]here are no similar benefits for ATM withdrawals and point-of-sale transactions."

¹⁸ Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending Research Brief (Apr. 16, 2008), available at <http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf> (last visited July 12, 2008) [hereinafter CRL Research Brief].

¹⁹ *Id.*

²⁰ *Id.* Respondents reporting the most overdraft incidents were those earning below \$50,000. *Id.* An ABA survey is consistent with CRL's findings. It found that while 18 percent of customers earning \$50,000 or more had paid an overdraft fee in the last year, 42 percent of customers earning less than \$50,000 paid a fee. It also found that only 4 percent of those earning \$50,000 or more paid at least ten fees in the last year, while 15 percent of those earning under \$50,000 paid at least ten fees. ABA Survey, *80 Percent of Consumers Have Not Paid Overdraft Fee in Past*

also found that Americans on Social Security pay over one-third of all overdraft fees charged to older Americans.²¹ This is simply unjustifiable, especially when the Agencies explicitly acknowledge that consumers likely to overdraft often benefit more in the long run if they are not allowed to overdraft.²²

A case study included in our recent report on the impact of overdraft fees on older Americans clearly illustrates how much worse off fee-based overdraft leaves a struggling consumer than either a cheaper alternative or no overdraft coverage at all. We graphed two months of actual checking account activity of one panelist from our database, whom we call Mary. Mary was entirely dependent on Social Security for her income. During January and February of 2006, she overdrew her account several times and was charged \$448 in overdraft fees. At the end of February, she had \$18.48 in her account. She was trapped in a destructive cycle, using the bulk of her monthly income to repay costly overdraft fees.

We also graphed what Mary's activity would have been if she with an overdraft line of credit at 18 percent. After two months, she would have paid about \$1 in total fees for her overdrafts and would have had \$420 in the bank.²³

Critically, *even if Mary had had no overdraft coverage at all*, she would have been better off than she was with fee-based overdraft. Industry's common argument is that fee-based overdraft is meant to protect consumers from having important payments, like utility bills, bounce. But with fee-based coverage, Mary's utility payments in both January and February were denied *anyway* because she had already overdrawn her account by more than \$300 each time – mostly due to repeat overdraft fees. With no protection at all, she may have incurred a late fee for the first utility bill, but she would have had the money to pay the second one. We will provide a more detailed analysis demonstrating why Mary would have been better off with no overdraft coverage in our comments on the Proposed UDAP Rule.

Given that the overall cost of overdraft fees exceeds the credit extended; that the most common trigger of overdraft fees are debit card transactions, which generate large fees for small purchases and cost the consumer nothing when denied; and that the majority of overdrafts are paid by a small group of core consumers least able to afford them, there is no doubt that fee-based overdraft programs harm consumers more than benefit them. We will provide a more detailed discussion of how the harms of fee-based overdraft dwarf the benefits in our comments on the Proposed UDAP Rule.

Year, Says ABA Survey, Aug. 29, 2007, available at <http://www.aba.com/Press+Room/083007ABASurvey.htm> (last visited July 14, 2008).

²¹ Americans aged 55 and over pay \$4.5 billion in overdraft fees. Social security recipients \$1.5 billion, or 34 percent of the total. *Shredded Security*, *supra* note 6, at 6.

²² The Agencies state: "Moreover, consumers relying on overdraft services may be more likely to overdraw their accounts, thereby increasing overdrafts in the long run." 73 Fed Reg. 28929.

²³ *Shredded Security*, *supra* note 6, at 9-10. The graph and accompanying discussion are attached to these comments as Appendix C.

II. Consumers Don't Want Transactions Covered When the Overdraft Fee Is Easily Avoidable.

According to CRL surveys, an overwhelming majority of consumers want to choose whether or not they are enrolled in a fee-based overdraft program.²⁴ Yet institutions typically automatically enroll customers in the most expensive option available when they open their account.²⁵ If the Agencies do not alter the Proposed UDAP rule to require opt-in, an effectively designed opt-out disclosure may be the only way consumers are made aware that they have a choice.

Moreover, when overdraft fees would be easily avoidable, such as with debit card transactions, an overwhelming majority of consumers have said they would prefer to have their transaction denied, whether their purchase is for \$5 or \$40.²⁶ Eighty percent would prefer the bank deny a \$5 purchase; 79 percent a \$20 purchase; and 77 percent a \$40 purchase.²⁷

This stated preference strongly refutes what industry would have us believe – that consumers want and appreciate fee-based overdraft coverage. The American Bankers Association (ABA) has claimed that its survey indicates that consumers are glad to have their overdrafts covered,²⁸ but its survey failed to notify consumers that any other options were available.²⁹ Industry consistently ignores the reality that most consumers have dramatically cheaper alternatives to fee-based overdraft programs they just are not aware of, like automatic links to savings accounts, overdraft lines of credit, or links to credit cards.

Industry also ignores the distinction between traditional check transactions and debit and ATM transactions that could be easily denied for no fee – the preferred route for 80 percent of

²⁴ A January 2008 CRL survey found that of consumers with a preference, 88 percent of all consumers, and 91 percent of respondents enrolled in a fee-based program, want a choice about whether or not a loan program is included with their account. The preference was even stronger among those who had overdrawn their account in the last six months, 94 percent of whom would prefer a choice about enrollment in the program. CRL Research Brief, *supra* note 18.

²⁵ Jean Ann Fox, Patrick Woodall, Consumer Federation of America, *Overdrawn: Consumers Face Hidden Overdraft Charges from Nation's Largest Banks*, 2 (June 9, 2005), available at <http://www.consumerfed.org/pdfs/CFAOverdraftStudyJune2005.pdf> (last visited July 7, 2008) [hereinafter CFA Report]; see also John M. Floyd, *Overdraft Program Well Worth the Effort, If Run Responsibly*, *American Banker*, Feb. 7, 2003, at 7.

²⁶ CRL Research Brief, *supra* note 18, at 3.

²⁷ *Id.*

²⁸ See, e.g., ABA Press Release, *supra* note 20; Nessa Feddis of the American Bankers Association, Testimony before the House of Representatives Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit (July 11, 2007), available at <http://aba.com/NR/rdonlyres/222CE044-577A-11D5-AB84-00508B95258D/48244/OverdraftsNessaFeddisJuly112007.pdf> (last visited July 9, 2008).

²⁹ ABA Press Release, *Id.*

consumers, who would have their transactions denied if they could, but who are typically given no choice in the matter.

In order to effectively capture consumers' preferences, an opt-out form must make consumers aware of and allow them to choose among all the alternatives, including having their transactions denied when they lack sufficient funds.

III. Institutions have an overwhelming incentive to maximize overdraft fees – and to therefore minimize the number of consumers who opt out.

The \$17.5 billion institutions earn each year in overdraft fees represents almost half of the \$38.6 billion in total service charge revenue they earned in 2007.³⁰ In 2003, a majority of banks surveyed by the ABA named overdraft lending as their second most profitable service behind residential mortgages.³¹

The increase in overdraft fees over the last several years is a function of both an increase in the amount of the fee³² and in the number of overdrafts paid³³ – both the result of a concerted effort on the part of many financial institutions to maximize overdraft revenue. Overdrafts are such a major source of fee income for institutions that they pay consultants for specialized proprietary software and implementation strategies to generate more fees. The number of institutions using vendor-based automated overdraft loan programs has exploded in recent years.³⁴ The consulting firms publicly tout the dramatic increases in fee revenue their programs generate – including claims of at least as high as a 200 percent increase.³⁵

³⁰ Yuki Noguchi, *Rising Bank Fees Squeeze Consumers*, National Public Radio, June 26, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=91888705&ft=1&f=2>.

³¹ Laura K. Thompson, *Bank Overdraft Programs Rankle Consumer Groups*, American Banker, May 20, 2003 (reporting on findings from ABA Community Bank Competitive Survey Report released in Feb. 2003).

³² Statistics indicate that from 1997 to 2007, the average overdraft fee charged increased an overwhelming 76 percent, from \$16.50 to \$29. The Board's research indicates that the average was \$16.50 in 1997 (see Federal Reserve Bulletin, *Retail Fees of Depository Institutions, 1997-2001*, 405, 409, available at <http://www.federalreserve.gov/pubs/bulletin/2002/0902lead.pdf> (last visited July 7, 2008) and \$21.82 in 2002 (see Board of Governors of the Federal Reserve System, *Annual Report to the Congress on Retail Fees and Services of Depository Institutions* at 5 (June 2003), available at <http://www.federalreserve.gov/boarddocs/rptcongress/2003fees.pdf> (last visited July 17, 2008)). The latest Bankrate survey on overdrafts found that the average charged was \$29 in 2007. Bankrate, *2007 Courtesy Overdraft Study*, available at http://www.bankrate.com/brm/news/chk/20071219_overdraft_survey_main_a1.asp (last visited July 7, 2008).

³³ While in the past, institutions would cover an occasional "courtesy" overdraft, now they generally operate automated systems that routinely approve overdrafts. In 2006, we estimated that overdraft fees accounted for 69 percent of all overdraft and NSF fees combined. In 2004, we estimated that 60 percent were overdraft fees. *Out of Balance*, *supra* note 10, at 10. Years ago, this figure was surely much lower, so the trend is undoubtedly upward.

³⁴ See CFA Report, *supra* note 25, at 1.

³⁵ See, e.g., Impact Financial Services' website: "Virtually all of our clients have increased the NSF fee income from 50-150% or more (with 100% or more being the norm)"

Looking ahead, absent substantive efforts to reduce abusive overdraft practices, generating overdraft fees will only get easier as debit card transactions continue to skyrocket.³⁶ Debit card transactions will not only continue to grow as a percentage of all bank transactions, but they will continue to provide banks more transactions *overall* as more consumers use them in place of cash for small transactions. In addition, since consumers often make these small transactions several times per day, the opportunity for cascading fees – which, if limited at all, top out at about \$245 per day³⁷ – is also on the rise.

Financial institutions have every incentive, then, to ensure that consumers don't opt out so they can continue to maximize overdraft fees. The Proposed Rule on Regulation DD must aim to counterbalance that incentive by giving consumers a fair chance to be informed of, and exercise, their right to opt out.

PART TWO: PROPOED RULE TO AMEND REGULATION DD

Absent substantive reform, at the very least the rules should require institutions to obtain consumers' affirmative consent before enrolling them in their most expensive overdraft programs. A draft opt-in form is discussed in Section III, below, and attached to these comments as Appendix B.

Should the Board retain its proposed opt-out requirement, we offer several recommendations to the Proposed Rule to improve the content, timing, and manner of the notice. To facilitate communication of our recommendations on the content, we have drafted a sample notice incorporating them, attached to these comments as Appendix A (CRL's Opt-Out Notice). We hope the Board will consider using this form, or elements of it, in its consumer testing. We would be happy to further discuss our reasoning behind designing the form as we did. We also offer comments on the Board's proposal regarding disclosure of account balances.

<https://impactfinancial.com/portal/AboutIFS/FromPresidentsDesk/tabid/66/Default.aspx> (last visited July 7, 2008); Moeb's Services, Inc.'s website: "Typical results after one year of using No-Bounce: overall fee income is increased by 200%." <http://www.moeb's.com/Default.aspx?tabid=102> (last visited July 9, 2008).

³⁶ In 2003, the number of electronic payments and check payments was roughly equal. Three years later, more than two-thirds of all noncash payments were made electronically, and the most common of those electronic payments were debit card transactions. 2007 Federal Reserve Payments Study, Financial Services Policy Committee, *Federal Reserve Study Shows That More Than Two-Thirds of Noncash Payments Are Now Electronic* (Dec. 10, 2007), available at <http://www.federalreserve.gov/newsevents/press/other/20071210a.htm> (last visited July 9, 2008).

³⁷ Washington Mutual and Bank of America both limit the number of overdrafts a consumer may be charged each day to seven. At \$35 each, the daily cap computes to \$245, excluding any sustained overdraft fees that may also be charged. WaMu, *Our Fees and Frees*, available at http://www.wamu.com/NR/rdonlyres/E58D9C54-1024-49DE-878A-661CC5518942/0/OurFeesandFrees_060108.pdf (last visited June 26, 2008); Bank of America's My AccessChecking Account disclosure of fees, available at http://www.bankofamerica.com/deposits/checksave/index.cfm?template=check_myaccess (last visited June 26, 2008).

I. Summary of Recommendations

The effectiveness of the Board’s proposed opt-out notice (Board’s Sample Notice)³⁸ is inherently limited by the Board’s own resistance to making overdraft loans subject to Regulation Z under the Truth In Lending Act (TILA), and the recommendations we make to the form will not resolve this problem. The notice asks institutions to disclose to consumers that they “may” pay overdrafts. Use of the word “may” is deceptive because it will lead consumers to believe that their overdrafts will be covered much less frequently than they actually will be.

Stating that an institution “will” cover overdrafts, however, is also not accurate without qualification. Regulation DD currently allows institutions’ disclosure of when they will not cover overdrafts to be so vague that it is only marginally helpful at best.³⁹ Industry will strongly resist any more specific disclosures about when overdrafts are not paid in efforts to avoid formal written agreements that could trigger TILA requirements. So long as the Board continues to exempt overdraft loans from Regulation Z, it condones and perpetuates misleading disclosures about overdraft coverage, as reflected in its own Sample Notice. For a detailed discussion of why overdraft loans should not be exempted from Regulation Z coverage, *see* CRL’s 2004 comments on the Board’s prior proposed amendments to Regulation DD.⁴⁰

Notwithstanding this overarching concern about the Board’s Sample Notice, we make the following recommendations.

Format and Content of Opt-Out Notice.

The opt-out form should:

- disclose the right to opt out more prominently;
- state clearly and early that overdraft coverage incurs fees;
- more clearly communicate that the customer could potentially save money by opting out;

³⁸ 73 Fed. Reg. 28749.

³⁹ The official staff commentary on Regulation DD states that the following disclosure of circumstances for nonpayment would be sufficient: “Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.” 70 Fed. Reg. 29596.

⁴⁰ Comments of the Center for Responsible Lending to the Board of Governors of the Federal Reserve System on proposed amendments to Regulation DD, promulgated pursuant to the Truth in Savings Act; and the Proposed Interagency Guidance on overdraft loan programs issued by the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, OTS, and NCUA, Docket No. R-1197 and Docket No. OP-1198, Part II.B (Aug. 6, 2004).

- make opting out easier by allowing consumers to opt out electronically or by simply checking a box on the notice itself;
- require that institutions with tiered fee systems disclose the highest fee in the tier;
- include disclosure of all available alternatives;
- be written in the simplest language possible;
- be stand-alone and not combined with the account agreement or other disclosures;
- contain the same content regardless of when it is provided; and
- at account opening, be required to contain the customer’s signature, whether or not the customer chooses to opt out.

Timing.

The Regulation DD Proposal must apply to existing account holders to be consistent with the Proposed UDAP Rule. In the alternative, the first overdraft incident covered for existing account holders should be covered for no fee.

The notice should be required immediately following each day that the consumer overdrafts and with any periodic statement that includes overdraft fees to ensure that consumers receive the opt-out notice when it is most relevant.

Disclosure of Account Balances.

We applaud the Board’s proposal to require that the first account balance disclosed to the consumer only those funds available for the immediate use or withdrawal, without causing an overdraft. However, an account balance disclosure – even a second balance – should never be allowed to include funds made available for overdraft. If such a balance is allowed, it must be accompanied by clear disclosure of the maximum amount of the potential overdraft fee. In addition:

- the first account balance should not be allowed to reflect deposits not yet available or debit card holds. If it is allowed to reflect these, overdraft fees should not be allowed to be charged for accessing those funds; and
- the requirement that the balance provided not include funds available for overdraft should be extended to apply to in-person, telephone, and live internet chat correspondence.

II. Opt-out Notice Requirement⁴¹

A. General Rule⁴²

We commend the Board for proposing that written notice and a reasonable opportunity to opt out be required. We think the Board’s Sample Notice includes several critical pieces of information that are usually not communicated to the consumer but should be – the amount of the fee;⁴³ the categories of transactions that trigger an overdraft;⁴⁴ any daily fees;⁴⁵ the smallest transaction for which an overdraft fee may be charged;⁴⁶ and the maximum daily costs or the fact that there is no daily limit.⁴⁷

B. Format and Content⁴⁸

The Board asks for comment on the proposed content of the form, including whether it provides sufficient information for consumers to evaluate effectively whether the overdraft program meets their needs. We have several recommendations we think are essential to enabling consumers to make an informed choice about overdraft. The form should do the following: (1) disclose the right to opt out more prominently; (2) state clearly and early that overdraft coverage incurs fees; (3) more clearly communicate that the customer could potentially save money by opting out; (4) make opting out easier by allowing consumers to opt out electronically or by simply checking a box on the notice itself; (5) require that institutions with tiered fee systems disclose the highest fee in the tier; (6) include disclosure of all available alternatives; and (7) be written in the simplest language possible.

In addition, we recommend (8) that the opt-out notice be stand-alone and not combined with the account agreement or other disclosures; (9) that the content of the notice be the same regardless of when it is provided; and (10) that, at account opening, the institution be required to obtain the consumer’s signature on the opt-out form, whether or not the consumer chooses to opt out.

⁴¹ 73 Fed. Reg. 28741, §230.10.

⁴² 73 Fed. Reg. 28742, §230.10(a).

⁴³ 73 Fed. Reg. 28742, §230.10(b)(2).

⁴⁴ 73 Fed. Reg. 28742, §230.10(b)(1).

⁴⁵ 73 Fed. Reg. 28742, §230.10(b)(3).

⁴⁶ *Id.*

⁴⁷ 73 Fed. Reg. 28742, §230.10(b)(4).

⁴⁸ 73 Fed. Reg. 28742, §230.10(b).

1. The notice should disclose the right to opt out more prominently.

The consumer's right to opt out should not be buried among the other disclosures on the notice. The Board's Sample Notice in the Federal Register is presented in one uniform font. Varying the font and changing the formatting are critical to consumers' ability to even notice that they have the opportunity to opt out. On CRL's Opt-Out Notice, the notice of the right to opt out is set off in a text box and the box is labeled, in bold, capitalized font, "YOUR RIGHT TO OPT OUT OF OUR OVERDRAFT PROGRAM."

2. The notice should disclose that the overdraft program is costing, or could cost, the consumer money, and it should do so early.

The amount paid in overdraft fees is probably the disclosure most likely to grab the consumer's attention. As a result, we recommend that the first line of the notice read as follows:

YOU WERE CHARGED \$__ IN OVERDRAFT FEES[on date] [or] [for
the period XX-XX-2XXX to XX-XX-2XXX].

The bracketed phrases allow for the disclosure to vary depending on whether the notice is being provided immediately following an overdraft incident or as part of a periodic statement.

The first paragraph of the Board's Sample Notice should be revised to include a statement that there are fees associated with the overdraft program. The form currently makes this statement, but not until the second paragraph, which is too late. Our proposed first paragraph reads as follows:

"We provide overdraft coverage for your account. This means that if there is a charge to your account when your account does not have enough funds, we may pay the overdraft and then charge you a fee. You will owe us the amount of the overdraft, plus the fee."

This paragraph would replace the Board's first paragraph, which reads as follows:

"We provide overdraft service for your account. This means that if there is a debit to your account when your account does not have sufficient funds, we may pay your overdraft."

The overdraft program should not be called a "service" because this label perpetuates the misconception that fee-based programs benefit consumers more than they harm them.

3. The form should clearly disclose both the potential risk and the potential benefit of opting out, including that the consumer could potentially save money by opting out.

Consumers would often be better off without fee-based overdraft coverage by opting for a cheaper alternative or for no coverage at all. As discussed in Part One, Section I, small debit card transactions are the leading cause of overdrafts, and they could be denied at no cost to the

consumer. The form should convey, then, not only the potential risk of opting out, but also the potential benefit.

The Board's Sample Notice discloses the potential risk of opting out, stating: "If you [opt out], however, you may have to pay a fee if you make transactions that are returned unpaid." It does not, at the same time, convey that the consumer may save money by opting out. The clear disclosure of the potential harm of opting out without a clear disclosure of the potential benefit of doing so gives the impression that the riskier option is opting out. As a result, it could inappropriately influence consumers not to opt out. CRL's Opt-Out Notice includes the following disclosure: "You may save money by opting out of this program. We offer less costly overdraft services that you may qualify for: 1) a line of credit, 2) an automatic link to your savings account, or 3) an automatic link to your credit card."

The form should retain its disclosure of the potential consequences of opting out. In fact, the Proposed Rule currently only *permits* briefly describing the consequences of opting out,⁴⁹ but this disclosure should be *required*. CRL's Opt-Out Notice includes disclosure of the potential NSF fee for each transaction type. This disclosure may give some consumers the information they need to make a perfectly rational choice that no overdraft coverage at all is the best option for them – especially if they are heavy debit card users and note that the consequence of having a debit or ATM transaction denied is an NSF fee of zero.

4. *The notice should make opting out as easy as possible by allowing for opting out electronically and providing a check-off form.*

The notice currently allows consumers to opt out by phone and mail.⁵⁰ The Board should clarify that the phone number must be toll-free and must not include a complex menu. The Board should also allow for opt-out via Internet and facsimile.

The Board asks for comment on whether consumers should be allowed to opt out electronically "provided that the consumer has agreed to the electronic delivery of information."⁵¹ Consumers should be able to opt out electronically regardless of whether they have agreed to the electronic delivery of information. When consumers opt out, they will be transmitting information to the financial institution, not vice versa, and their ability to do so electronically should not depend on whether or not they have agreed to receive information from the institution electronically.

The Board also asks for comment on whether institutions should be required to provide a form with a check-off box that consumers may mail in to opt out. Allowing consumers to take action on the notice itself, or on an attached form, provides them with perhaps the easiest method for opting out. At the very least, it is far easier than what the Board's Sample Notice currently suggests – to "write us" for more information on opting out. Writing a letter to one's financial

⁴⁹ 73 Fed. Reg. 28742, §230.10(b)(3).

⁵⁰ 73 Fed. Reg. 28742, §230.10(b)(5).

⁵¹ *Id.*

institution is not something consumers do every day, or perhaps ever, and it requires far more thought and effort than should be required to opt out of an abusive system.

CRL’s Opt-Out Notice includes a check-off form at the bottom of the page that could be separated along a perforated line and returned to the institution. Adding perforation may increase costs for institutions, so in the alternative, the form could simply instruct the consumer to cut along the dotted line themselves before returning the bottom portion of the form. This method would allow the consumer to retain the disclosures on the upper portion of the form, and it would save institutions costs by not requiring an entire second page. Another alternative method is to require the institution to provide two copies of the form, allowing the consumer to return one and keep the other, as required for the Notice of the Right to Cancel under Section 1635 of TILA.⁵²

5. *The Board should clarify that institutions with tiered fee systems should be required to disclose the highest fee in the tier.*

The Board’s Sample Notice currently reads as follows: “We will charge you a fee of \$__ for each overdraft item that we pay” To provide guidance to institutions with tiered fee structures, the Board should clarify that the fee that must be disclosed is the highest fee in the tier. The disclosure should read: “We will charge you a fee of up to \$__ for each overdraft item that we pay”

First, consumers deserve to be told the maximum amount they may be charged. Second, the highest fee *is* the fee consumers are most likely to be charged. As noted earlier, research shows that 16 percent of consumers who overdraft pay 71 percent of overdraft fees.⁵³ Five percent of those who overdraft pay 31 percent of overdraft fees.⁵⁴ These statistics indicate that a small group of consumers overdraft often and pay most of the overdraft fees. As a result, the fee amounts in tiered systems that are mostly frequently being paid are likely the highest fees in the tier. This assumption is consistent with our research finding that the average fee paid is \$34. This amount is much closer to the highest fee in institutions’ tiers than the lowest fee,⁵⁵ indicating that most consumers are paying at the highest tier. The required disclosure, then, should reflect that cost.

⁵² Regulation Z, 12 CFR § 226.15(b)

⁵³ See text accompanying note 20, *supra*. CRL Research Brief, *supra* note 18.

⁵⁴ CRL Research Brief, *supra* note 18.

⁵⁵ *E.g.*, Bank of America’s fee for the first day of overdraft is \$25 and for subsequent days is \$35. Bank of America’s My AccessChecking Account disclosure of fees, *supra* note 37.

6. Institutions should be required to disclose all available alternatives to fee-based overdraft.

The Proposed Rule requires disclosure of an overdraft line of credit if it is offered, and the Board asks for comment on whether institutions should be required to list all available alternatives to fee-based overdraft.⁵⁶ They should be. A basic principle of disclosure is that consumers need clear information in order to compare costs and make informed choices about a product. Without at least mentioning all the alternatives, the disclosure would not allow consumers to make an informed choice. In addition, it is important for consumers to know that links to savings accounts or credit cards may be available because (i) they may sound more familiar to consumers; and (ii) they may not require independent credit checks.

7. The language on the notice should be as simple as possible.

For the most part, the Board uses everyday language on its Sample Notice. We commend its effort and ask that it continue to do so on any subsequent iterations, and we have a few recommendations on how to further simplify the language.

We have replaced the word “debit” with the word “charge” because many consumers will not understand what “debit” means. We have also reworded a few other statements in an effort to make their meaning more intuitive. These suggestions are reflected on CRL’s Opt-Out Notice and listed below.

a. Instead of:

[We can charge you a maximum of \$__ in fees per day and \$__ per statement period for overdrawing your account.] [There is no limit to the amount of fees we can charge you for overdrawing your account per day/per statement period.]

We recommend:

[We can charge you a maximum of \$__ in fees per day and \$__ per statement period for spending more than you have in your account.] [There is no limit to the amount of fees we can charge you for spending more than you have in your account, per day or per statement period.]

b. Instead of:

We may charge you this fee even if your overdraft amount is as low as \$__.

⁵⁶ 73 Fed. Reg. 28742, §230.10(b)(6).

We recommend:

We may charge you this fee even if you spend only \$__ more than you have in your account.

c. Instead of:

[We may also charge you additional daily fees of \$__ for each day your account remains overdrawn.]

We recommend:

[We may also charge you additional daily fees of \$__ for each day your account balance remains below zero after the first _ days.]

d. Instead of:

You have the right to opt out of this service and tell us not to pay any overdrafts.

We recommend:

You have the right to opt out of this program and tell us not to pay any transactions when you don't have enough funds in your account.

8. *The opt-out notice should be stand-alone.*

We agree with the Board's proposal that institutions must design their opt-out notice to be "substantially similar" to the final sample form the Board issues in its final rule.⁵⁷ Each institution should be allowed a reasonable degree of flexibility to account for differences in when the disclosure is provided (i.e., at account opening or following an overdraft), information systems and other factors.

We also agree that the notice should be "segregated" from other disclosures, as the Board suggests.⁵⁸ But the Board should go further and require that the notice be stand-alone. There is precedent for requiring a disclosure to be on a separate document, including the Notice of the Right to Cancel under Regulation Z.⁵⁹ The opt-out notice is too likely to be overlooked if it is included as part of the account agreement or otherwise shares a page with other disclosures.

⁵⁷ 73 Fed. Reg. 28742.

⁵⁸ *Id.*

⁵⁹ Regulation Z, 12 CFR §226.23(b)(1): "In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following. . . ."

The Board expresses concern that a segregated disclosure could overemphasize overdraft fees in relation to other disclosures provided at account opening.⁶⁰ As noted earlier, these fees account for \$17.5 billion, or nearly half, of all service revenue institutions earn.⁶¹ They are clearly the single largest category of bank fees, and they cause more harm than any other category, not only because they are higher (in the aggregate and individually) but also because they are charged without consumers' consent. Regulation E requires that ATMs warn consumers of ATM fees and ask whether they wish to proceed with a transaction before they are charged a fee.⁶² And consumers consent to a wire transfer or stop payment fee before they proceed with the transaction. But consumers are almost never asked whether or not they agree to be charged an overdraft fee before they proceed with a transaction. *Overdraft fees, then, cannot be overemphasized.* The risk consumers run of being bombarded with unauthorized cascading overdraft fees could be the greatest risk they run when they open a checking account. It is certainly great enough that the warning about it warrants its own page.

9. *The notice should include the same content regardless of when it is provided.*

The Board requests comment on whether institutions should be permitted to exclude some of the required content of the opt-out notice in subsequent notices.⁶³ It suggests, for example, that perhaps available alternatives should not be required to be disclosed on each notice; or perhaps the amount of the fee should not be required when the transaction history on the account showing the charges is also disclosed; or perhaps the consumer need not be reminded that he or she may incur an overdraft fee for a small dollar overdraft if the periodic statement reflects both the fee and the amount of the transaction that triggered it.⁶⁴

The opt-out notice should not allow for omission of certain disclosures based on circumstances for several reasons. First, consumers are more likely to become accustomed to the disclosure, how to read it and what to look for, if it looks the same every time.

Second, we know consumers receive many disclosures but read few. As the Board points out, consumers may not focus on the notice the first time they receive it.⁶⁵ It is difficult to predict when the consumer will first realize that they have a right to opt out. But it would defeat the purpose of the opportunity to opt out if, for example, the first time they do study an opt-out notice, it makes no mention of alternatives.

⁶⁰ 73 Fed. Reg. 28742-43.

⁶¹ See text accompanying note 30, *supra*.

⁶² Regulation E, 12 CFR §205.16.

⁶³ 73 Fed. Reg. 28743.

⁶⁴ *Id.*

⁶⁵ *Id.*

Third, the required notice should help consumers put all of the pieces together to evaluate whether the overdraft program is something that benefits them. A small transaction amount next to a big overdraft fee will not necessarily lead consumers to realize how outrageous the fee is. They are more likely to realize this when reading, “We may charge you this fee even if you spend only \$1.00 more than you have in your account.” Likewise, cumulative overdraft fees appearing on a monthly statement will likely not have the same impact on consumers as their seeing the amount of the fee as a singular disclosure. And many consumers don’t know the daily fee exists, so they may not recognize it as such on their periodic statement without the separate, straightforward disclosure on the opt-out notice.

In addition, the disclosures on the form are less helpful, or even harmful, when they are not viewed in the context of the entire form. As discussed in subsection 3 above, the potential benefits should not be discussed without the potential consequences, the potential consequences without the potential benefits, or the amount of the fee without the maximum that could be incurred per day.

Fourth, allowing financial institutions discretion in determining what they are required to include is too likely to lead to their omitting important terms. As discussed in Part One, institutions have a strong financial incentive to keep customers enrolled in fee-based overdraft. Given the opportunity, they are more likely to lean toward omission than to ensure that consumers notice and understand the fees they are being charged.

Finally, allowing financial institutions to choose which disclosures to include makes enforcement of the opt-out notice more difficult. To find a violation, regulators will often need to ask institutions why they omitted certain disclosures – and institutions will likely become far too skilled at providing reasons.

The Board also requests comment on the benefit provided to consumers, and the burden posed to institutions, by the requirement that all content be included on every notice, including available alternatives. We have already provided numerous reasons this requirement benefits consumers. According to our affiliate, Self-Help Credit Union, providing all the content every time is really about designing a uniform form – once – a task that it thought all financial institutions could be expected to do without unreasonable burden. In fact, repeat usage of a single form at all times is likely much cheaper for lenders than issuing various different forms and dealing with the compliance burden of knowing which form is appropriate. (While the full form may require more paper use than a shorter form, the substantial benefit to the consumer surely outweighs the incremental cost to the institution of providing a page-long form – which would quite possibly cost less than the manual discretion involved in deciding which disclosures to omit on a case-by-case basis.)

The Board further requests comment on whether the content should be the same regardless of whether it is provided with the monthly statement or immediately following an overdraft. (As discussed in subsection 9 below, the notice should be required *both* immediately following an overdraft *and* with any periodic statement that includes an overdraft fee.) We believe the statement should be uniform regardless of when it is required. The disclosure we suggest on CRL’s Opt-Out Notice in subsection 2 above (“YOU WERE CHARGED \$__ IN OVERDRAFT

FEES [on date] [or] [for the period XX-XX-2XXX to XX-XX-2XXX]”) allows for an appropriately modified disclosure depending on whether the form is provided as an immediate response to an overdraft or as part of the periodic statement.

Finally, the Board requests comment on the burden of requiring that if the opt-out notice is provided on the periodic statement, it appear in proximity to the aggregate fee disclosure required in §230.11(a). Notice of the opportunity to opt out must be provided on the statement itself in proximity to the aggregate fees. Consumers are more likely to review their periodic statement than any accompanying documents – often bill stuffers that consumers are accustomed to ignoring. Logistically, it may be difficult to place the entire notice we recommend on CRL’s Opt-Out Notice in proximity to the aggregate fee disclosure. So we recommend that a brief explanation of the right to opt out notice appear in proximity to the fees, along with a reference to the full-length opt-out notice, to be included as the last page of the statement. The notice should be on the same type of paper as the statement, folded with the statement, and include a page number denoting it as the last page of the statement.

The brief explanation in proximity to the aggregate overdraft fees should read as follows:

YOU HAVE THE RIGHT TO OPT OUT OF OVERDRAFT COVERAGE.

You can also tell us not to pay ATM withdrawals and debit card purchases when you don’t have enough funds, but to continue to pay other types of transactions.

You may save money by opting out of this program. We offer the following less costly overdraft payment services that you may qualify for: 1) a line of credit, 2) an automatic link to your savings account, or 3) an automatic link to your credit card.

**To opt out, complete and return last page of this statement called
“NOTICE of OVERDRAFT FEES.”**

This method would achieve the dual goals of helping the consumer make the connection between the fees charged that period and the opportunity to opt out, and ensuring that the opt-out notice remains a comprehensive, standardized disclosure.

10. At account opening, the institution should be required to obtain the customer’s signature on the opt-out form.

For reasons noted above, numerous factors weigh against the customer’s chances of reading and understanding the opt-out notice at account opening. To try to counterbalance these factors, the institution should be required to obtain the customer’s signature on the form at account opening, whether or not the consumer chooses to opt out, before the checking account can be opened.

C. Timing⁶⁶

In this section of the Proposed Rule, the Board notes that it expects that the requirement to provide notice before overdraft fees are assessed would apply only to accounts opened after the effective date of the final rule.⁶⁷ This expectation is completely inconsistent with the Proposed UDAP Rule. As we discuss in subsection 1 below, the notice should be required to be sent to all existing account holders upon enactment of the rule for all institutions that wish to continue to charge overdraft fees. In the alternative, the first overdraft incident (i.e., the first series of consecutive overdrafts) the bank covers should be covered for no fee, and then the notice should be sent.

We commend the Board for proposing rules aimed at providing consumers notice of their opportunity to opt out “at a time when the information may be most relevant.”⁶⁸ We discuss in subsection 2 below that applying the Board’s same reasoning, the notice should be required immediately following each day the consumer overdrafts. In the alternative, it should be required immediately following the first overdraft in each cycle *and* with any periodic statement covering a period in which the consumer was charged overdraft fees.

1. The Regulation DD Proposal must apply to existing account holders to be consistent with the Proposed UDAP Rule. In the alternative, the first overdraft incident covered for existing account holders should be covered for no fee.

The Proposed UDAP Rule unequivocally states that a financial institution may not charge an overdraft fee without providing the opportunity to opt out.⁶⁹ The Proposed Rule on Regulation DD likewise states: “As applicable, the notice . . . must be provided: (1) Prior to the institution’s imposition of a fee for paying a check or any other item when there are insufficient or unavailable funds in the consumer’s account”⁷⁰

The only statement indicating that the proposals are not intended to apply to existing account holders is in the discussion of the Proposed Rule on Regulation DD.⁷¹ Nothing in the Proposed

⁶⁶ 73 Fed. Reg. 28743, §230.10(c).

⁶⁷ “The Board anticipates that the requirement to provide notice before overdraft fees are assessed would apply only to accounts opened after the effective date of the final rule. Thus, depository institutions would not be required to provide initial opt-out notices to existing customers.” 73 Fed. Reg. 28743.

⁶⁸ 73 Fed. Reg. 28741.

⁶⁹ “A bank must not assess a fee or charge on a consumer’s account in connection with an overdraft service, unless the bank provides the consumer with the right to opt out of the bank’s payments of overdrafts and a reasonable opportunity to exercise that opt-out and the consumer has not opted out.” 73 Fed. Reg. 28943, §227.32.

⁷⁰ 73 Fed. Reg. 28748, §230.10(c)(1).

⁷¹ 73 Fed. Reg. 28743.

UDAP Rule indicates the same. The two proposals and the commentary supporting them may not be finalized as proposed without being irreconcilably contradictory.

Institutions would incur some cost to notify existing customers of their opportunity to opt out. But the cost, whatever it may be, is not unreasonable given the \$17.5 billion consumers pay in overdraft fees each year. By not applying to existing account holders, the Proposed Rules would leave the *vast majority* of consumers outside of their protection.

Notification of existing customers is especially important in light of the relatively small number of existing customers who will open new accounts anytime soon, given the relatively low attrition rate the financial services industry enjoys. A 2003 estimate from a financial institutions consulting firm found that only 14 percent of banks' customers leave their bank each year.⁷² And consumers were 70 to 80 percent less likely to leave after they were set up on electronic bill payments;⁷³ as electronic bill payments are increasing, attrition is likely even lower than it was in 2003. Some of these existing customers are bound to be charged a series of cascading overdraft fees without the opportunity to opt out that the Proposed UDAP Rule purportedly requires.

If the Agencies determine that the Proposed Rules do not apply to existing account holders, they should write this major exception into the rules themselves so that the rules more honestly reflect the very limited nature of the protection they are offering existing account holders. To preserve the intent of the Proposed UDAP Rule, they should also require that the first overdraft incident covered for an existing customer be covered for no fee, and that the customer then receive notice and a reasonable opportunity to opt out before any overdraft fees are charged. Any less protective arrangement flies in the face of the Proposed UDAP Rule.

2. The notice should be required immediately following each day that the consumer overdrafts and with any periodic statement that includes overdraft fees.

We agree with the Board that the notice should be provided at account opening or, for institutions that do not immediately enroll their consumers in overdraft, otherwise provide the consumer a reasonable opportunity to opt out before any fees are imposed.⁷⁴ We further agree that providing the opt-out notice only at account opening may have limited effectiveness.⁷⁵ At that time, consumers may optimistically believe that they are unlikely to overdraw their account,

⁷² Michelle Higgins, *Direct Deposit, Online Billing Make Switching Banks Harder*, Wall Street Journal, Aug. 14, 2003 (citing estimates from Celent Communications); see also Bill Stoneman, *After Free . . . What Is There To Offer?*, Banking Strategies (May/June 2006) (citing Betty Cowell, Wachovia executive vice president and director of retail banking, noting that Wachovia enjoyed 11 percent household attrition versus an industry average of 14 percent); see also Laura Fuller, *A Simple Customer-Retention Strategy: Securing Direct Deposits*, ABA Bank Marketing, May 1, 2005 (noting that attrition rates range from 12 to 18 percent).

⁷³ Michelle Higgins, *Id.* (citing Garter Inc.).

⁷⁴ 73 Fed. Reg. 28743.

⁷⁵ *Id.*

so they may not focus on the notice. In any event, they receive a slew of disclosures at account opening, and the opt-out notice is bound to be lost among them.

We are glad, then, that the Board is requiring that the notice be sent when it will be more relevant – at some point during the period during which the consumer is charged an overdraft fee. But we are concerned that the Proposed Rule allows for an unfortunate scenario to occur entirely too often: the consumer doesn't learn that he or she has already been charged hundreds of dollars in overdraft fees, and therefore does not opt out, until receipt of the periodic statement. To avoid this scenario, the notice should be provided both immediately after each day a consumer overdrafts – when the individual fees incurred are most relevant and so that consumers can more quickly avoid them by immediately opting out – *and* with the period statement, which allows consumers to see the aggregate impact of fee-based overdraft.

Overdraft fees tend to occur in bunches, especially in today's economy where debit cards have replaced cash for many small, everyday purchases. It's safe to assume that overdrafts also tend to occur as people's paychecks run out and they are approaching their next one.⁷⁶ Consumers tend to be paid approximately every two weeks, which means that consumers who are living paycheck to paycheck – those most likely to overdraft – have at least two periods per month when they are most likely to incur overdraft fees.⁷⁷ A consumer may be notified of his or her first overdraft of the month on the 2nd of the month, receive a paycheck and return to a positive balance, and less than two weeks later incur another cascade of fees. Under the Proposed Rule, the institution is not expected to provide notice of any fees beyond the first one until the end of the month, when the account holder could have opted out two or even four weeks earlier and saved themselves hundreds of dollars. Even if the consumer didn't elect to opt out, the notice could also serve to discourage additional overdrafts and prevent the accumulation of more fees.

Promptly notifying consumers of their overdraft fees is not currently required by Regulation DD. However, the February 2005 Joint Guidance identified it as a best practice.⁷⁸ If the Board were to require only that *if* an institution chooses to provide prompt notification of an overdraft, *then* they must also provide the opt-out notice, it would create a disincentive for institutions to provide notice of overdraft fees as they occur, even if they were doing so before issuance of the rule. Institutions who don't want their consumers to opt out – i.e., the overwhelming majority of institutions – may simply stop providing notice of overdrafts until the period-ending statement.

But providing notice until period-end, as discussed above, is too late. First, as we will discuss more thoroughly in our comments on the Proposed UDAP Rule, an opportunity to opt out offers limited utility. So the rule must maximize the relevance of the notice and require it when the

⁷⁶ See, e.g., the case study of Mary's cascading overdraft fees, text accompanying note 23, *supra*, and Appendix C.

⁷⁷ The frequency with which consumers are paid is consistent with our research, which shows that most overdrafts are repaid, i.e., the consumer's next deposit is made, within several days following the overdraft. *Debit Card Danger*, *supra* note 15, at 25.

⁷⁸ 70 Fed. Reg. 9127, 9132. Department of the Treasury – Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, NCUA, Joint Guidance on Overdraft Protection Programs.

pain caused by the fee is most acute. Second, a consumer may not learn of an overdraft until a month's worth of cascading fees until has caused irreparable financial harm.

Currently, the optional nature of the best practice drives a race to the bottom, since by implementing it, institutions risk placing themselves at a competitive disadvantage. Requiring the practice would put institutions on equal footing, while providing a critical benefit to consumers by helping to ensure they receive a reasonable opportunity to opt out. The Board should therefore amend Regulation DD to require the best practice of the 2005 Joint Guidance: prompt notification of overdraft fees.

III. CRL's Opt-In Notice

As noted earlier, our comments on the Proposed UDAP Rule will argue that it is an unfair trade practice to charge consumers overdraft fees unless they affirmatively opt in to a fee-based overdraft program. In hopes that the Board will consider our recommendation when conducting its consumer testing, a one-page opt-in form (CRL's Opt-In Notice) is included with these comments as Appendix B. This form has not had the benefit of consumer testing, and we may continue to tweak it as we think about ways it could be made more effective. We invite the Board to do the same and to use it, or some variation of it, in its consumer testing.

The form has two sections:

- I: Your Options for How We Handle an Overdraft.

This section lists all available options: (1) to transfer funds from another account, (2) to apply for a personal line of credit, (3) to transfer funds from a credit card; (4) to use the overdraft program to pay the item; or (5) to decline to have the overdraft covered.

It then discloses the fee the consumer will be charged under each scenario in the event of a \$25 overdraft. It is meant to illustrate for the consumer in tangible terms the costs associated with each alternative.

It also contains the following two disclosures, identical to those included on both the Board's and CRL's Opt-Out Notices:

- We may charge you this fee even if you spend only \$__ more than you have in your account.
 - [We can charge you a maximum of \$__ in fees per day and \$__ per statement period for spending more than you have in your account.] [There is no limit to the amount of fees we can charge you for spending more than you have in your account, per day or per statement period.]
- II: Make Your Choice.

This section asks the consumer to choose among the five alternatives. It allows for different options to be chosen for (i) checks and electronic transfers and for (ii) debit and ATM

transactions. It therefore allows for the possibility that some consumers may want coverage for some transactions but not for others.

We encourage the Board to test the functionality of the form with consumers. We would be happy to discuss it further, including the reasoning we used in designing it, at the Board's convenience.

IV. Disclosure of Aggregate Costs of Overdraft⁷⁹

We commend the Board's proposal to extend the requirement that aggregate fees for both overdrafts and unpaid items be extended to all institutions from only those that promote payment of overdrafts. We agree with the Board's reasoning that most institutions systematically cover overdrafts whether they promote them or not. We also hope that this change will encourage transparency by removing the disincentive that has likely discouraged some institutions from providing information about opt-out or alternatives to fee-based overdraft.

The Board requests comment on the benefit that this requirement would provide consumers and the burden it would pose on institutions. The benefit is significant. Most consumers don't keep running tallies in their heads of how much they have spent during the year on overdrafts. Some consumers may be surprised by how much they have paid, and it may inspire them to seek lower cost alternatives. We spoke with Self-Help Credit Union about the burden this requirement would pose on institutions. It accumulates NSF fee information – both the number of fees and the dollars charged – in its system, and it knows that overdraft fee information can be accumulated in the same simple fashion. It commented that providing this disclosure on a periodic statement requires a relatively simple reprogramming of what is, in most cases, a very smart computer system.

We commend the Board's requirement that the aggregate fee disclosure be required in close proximity to the transaction history on the statement. This arrangement will better enable consumers to make the connection between how their current activity may have contributed to a history of overdraft fees and to respond accordingly. We also agree that an easy-to-understand tabular format should be required. We prefer Alternative 1, the table, to Alternative 2 in Appendix B-11 because we find it easier to digest.

V. Disclosure of Account Balance⁸⁰

We applaud the Board's proposal to require that the first account balance disclosed to the customer include only those funds available for immediate use or withdrawal, without incurring an overdraft. However, the Board should prohibit institutions from ever disclosing a balance – even if it is the second balance listed – that includes funds available for overdraft. Balances should also exclude debit card holds and deposits not yet available for use. Further, the Board

⁷⁹ 73 Fed. Reg. 28743-44, §230.11(a).

⁸⁰ 73 Fed. Reg. 28745, §230.11(c).

should extend its proposal on account balance disclosure from electronic inquiries to any inquiries, including live discussions with bank personnel. Finally, the Board should stress that this provision must apply to both in-network and out-of-network ATMs.

A. *A second balance including amount available for overdraft should not be allowed.*

Disclosing a balance that includes funds available for overdraft should be prohibited. We appreciate the Board’s proposal to require that a disclosure accompany this balance, indicating that it includes funds available for overdraft. But whatever disclosure accompanies this second balance will only accomplish so much. A significant number of consumers are likely to be confused and not realize the fees they will incur by accessing those funds.

These are not funds in the customer’s account. They are funds available for the customer to *borrow* at an astronomical interest rate. Consumers would not expect institutions to include the available credit on a credit card or line of credit every time they simply asked for their account balance, and overdraft credit should be no different. The Board has authority under TISA to ban this disclosure – the same authority it is employing to ban inclusion of overdraft funds in the first account balance disclosed.⁸¹ It should do so, both to protect consumers from misleading disclosures and in the interest of public policy, which should be encouraging only affordable credit, at reasonable interest rates, and not the most expensive form of credit available.

If the Board does continue to allow this disclosure, it must require that the amount of the overdraft fee also be disclosed. Many consumers will understandably believe that the “fee” the ATM disclosure is referring to is the same fee they are usually charged for using an out-of-network ATM: \$2 or \$3. They may have no idea they are about to pay \$34 for withdrawing \$20. It should not be difficult for institutions to include their maximum fee in the disclosure, and it is right that institutions with tiered systems disclose the maximum fee since, as discussed in subsection 5 above, the majority of the overdraft fees paid in any tiered system are mostly likely the highest fee in the tier. Notwithstanding that allowing disclosure of the second balance would undoubtedly harm consumers, such balance should at least require the following disclosure:

“This balance is higher than your account balance because it includes additional funds we lend to you if you overdraft. You [will/may] be charged a fee of [up to (for tiered systems)] \$__ every time you access those additional funds.”

B. *The account balance should not include deposits not yet available or debit card holds.*

We note that the Proposed Rule states that for purposes of the provision governing account balance disclosure, the first balance disclosed may, but need not, include funds that are deposited

⁸¹ TISA §263(e) (12 U.S.C. 4303(e)): “No depository institution or deposit broker shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.”

in the consumer’s account but not yet available for withdrawal in accordance with the funds availability rules under the Board’s Regulation CC.⁸² It also states that the balance may, but need not, include debit card holds. The Board explains that “institutions are not expected to reconfigure their internal systems to provide real-time balance disclosures.”⁸³

The consumer’s account balance should not include deposits made but not yet available or debit card holds, but rather it should reflect the actual amount available to the consumer. We will request in our comments on the Proposed UDAP Rule that the Board implement its proposal to prohibit overdraft fees caused solely by debit card holds. We will also request that the Board extend this prohibition of fees to overdrafts caused solely by accessing funds deposited and actually received by the institution but not yet posted – *especially* if an institution includes these funds in the first balance provided to the customer – if those deposits eventually post without issue. Such prohibition is only fair, especially given how dramatically the posting of debits has outpaced the posting of credits in recent years. Please see our comments on the Proposed UDAP Rule for a complete discussion of these recommendations.

C. *The proposal should be extended to apply to in-person, telephone, and live internet chat correspondence.*

This requirement that a customer’s first balance exclude amounts available for overdraft should not be limited to automated systems. Many consumers still obtain their account balances from the teller at the bank, on the phone, or, likely increasingly, via internet chat. The Proposed Rule states that the Board is limiting the rule to automated systems because of the “compliance burden associated with monitoring individual conversations and responses.”⁸⁴ At the same time, it states, “Of course, such discussions may not be deceptive.”⁸⁵ We struggle to imagine the regulatory burden of trying to enforce the requirement that “discussions may not be deceptive.” There is simply no good reason institutions should not be expected to instruct their employees to provide their customers with their true account balance – the one that does not include funds available for overdraft.

D. *This rule should apply to all ATMs, in and out of network.*

We understand that some financial institutions have claimed that they cannot exclude the amount available for overdraft from the account balance provided at out-of-network ATMs. We cannot imagine any reason why institutions would not be able to do this, and their concern actually speaks volumes about how they view the overdraft funds they make available – as so central to their customers’ account balances that it’s easier to disclose a balance *with* these funds than *without* them. Through discussion with Self-Help Credit Union, we understand that the financial

⁸² 12 CFR Part 229.

⁸³ 73 Fed. Reg. 28745.

⁸⁴ *Id.*

⁸⁵ *Id.*

institution who owns the card is who decides what balance will be disclosed in response to an account inquiry. While some out-of-network ATMs may not have the capability to disclose an account balance, if they are capable of disclosing *a* balance, the institution holding the card decides *which* balance to disclose. If they are only capable of disclosing *one* balance and not two, then institutions will have to settle for disclosing only the balance that does not include overdraft funds, which is how it should be anyway.

VI. Conclusion

We thank the Board for the focus it has brought to the issue of abusive overdraft fees. The Board's Sample Notice includes several disclosures of key fee-related items that must be communicated to consumers being hit with unauthorized fees. We urge the Board to improve the form by increasing the prominence of the right to opt out and more clearly conveying the potential benefits of opting out.

The Board must ensure that the Proposed Rules apply to existing account holders. It should also modify the timing requirements to ensure that the opt-out notice is provided immediately after a fee is charged. And it should prohibit fees available for overdraft to be included in disclosed account balances.

We ask the Board to include CRL's Opt-In Notice or a variation of it in its consumer testing, in light of our comments on the Proposed UDAP Rule, where we support an opt-in requirement over an opt-out requirement because it will be dramatically more protective of consumers.

If the Board wishes to discuss anything in these comments, please do not hesitate to contact us.

APPENDIX A

CRL's Opt-Out Notice

NOTICE of OVERDRAFT FEES

YOU WERE CHARGED \$__ in OVERDRAFT FEES [on date][or][for the period XX-XX-2XXX to XX-XX-2XXX].

You Have the Right to OPT OUT of our FEE-BASED OVERDRAFT PROGRAM.

We provide overdraft coverage for your account. This means that if there is a charge to your account when your account does not have enough funds, we may pay the overdraft and then charge you a fee. You will owe us the amount of the overdraft, plus the fee.

- We will charge you a fee of up to \$__ for each overdraft item that we pay, including ATM withdrawals, debit card purchases, checks, automatic transfers, and in-person transactions.
- We may charge you this fee even if you spend only \$__ more than you have in your account.
- [We may also charge you additional daily fees of \$__ for each day your account balance remains below zero after the first _ days.]
- [We can charge you a maximum of \$__ in fees per day and \$__ per statement period for spending more than you have in your account.] [There is no limit to the amount of fees we can charge you for spending more than you have in your account, per day or per statement period.]

YOUR RIGHT TO OPT OUT OF OUR OVERDRAFT PROGRAM.

You have the right to opt out of this program and tell us not to pay any transactions when you don't have enough funds in your account.

You also have the right to tell us not to pay ATM withdrawals and debit card purchases when you don't have enough funds, but to continue to pay other types of transactions.

You may save money by opting out of this program. We offer the following less costly overdraft payment services that you may qualify for: 1) a line of credit, 2) an automatic link to your savings account, or 3) an automatic link to your credit card.

If you are not covered by any type of overdraft service, you may have to pay a non-sufficient funds (NSF) fee if we deny (don't pay) the transaction:

<u>Type of Transaction</u>	<u>NSF Fee, if any, charged if transaction is denied</u>
ATM/Debit Card Purchases	\$
Checks	\$
Electronic payments	\$

To opt out of our overdraft coverage by mail or fax, please complete the bottom portion of this page. Mark an "X" beside the transactions for which you wish to opt out. Please also mark an "X" beside "I wish to apply for a line of credit" if you would like to apply for this less costly overdraft service. Sign and date the form, and return the bottom portion to us at [insert address] or via fax at 1-800-XXX-XXXX.

You may also opt out or obtain information about alternatives over the phone or on-line. Call **1-800-XXX-XXXX** or visit our website at **[enter specific opt-out page of website]**.

-----Cut along this line and return bottom portion-----

1. ___ I wish to opt out of the overdraft program for all transactions.

-or-

___ I wish to opt out of the overdraft program for debit card purchases and ATM withdrawals *only*.

2. ___ I wish to apply for an overdraft line of credit.

Customer signature

Printed Name

Date

Account number

Please return form to [insert address] or fax it to 1-800-XXX-XXXX.

APPENDIX B

CRL's Opt-In Notice

CHOOSE HOW YOU WANT US TO HANDLE OVERDRAFTS

An overdraft can occur if you write checks, make ATM withdrawals, make debit card purchases, or have automatic transfers that use up more than the available balance in your account. **You can choose how we handle your overdrafts. Evaluate the options in Part I below, and make your choice in Part II.**

I. Your Options for How We Handle an Overdraft

<u>Type of Transaction</u>	<u>Sample Overdraft Amount</u>	<u>Fee You Will Be Charged</u>
1. Transfer from another account	\$25	\$__ [+ other additional fees]
2. Line of credit	\$25, paid back in 30 days	\$__ per transfer (Based on an annual percentage rate (APR) of __% on the amount borrowed [, plus a fee of \$__ each time you use the line of credit].)
3. Transfer from credit card	\$25, paid back in 30 days	\$__ per transfer (Based on an APR of __% on the amount borrowed, plus a cash advance fee of \$__ per transfer, [plus a fee of __% of the amount of each advance].)
4. Fee-based overdraft	\$25, paid back in 30 days	\$__ per item paid. If you repay the overdraft within 30 days, the equivalent APR would be __%.
5. Decline to have overdraft covered	You will not be allowed to overdraw your account.	Debit card or ATM: Transaction would be denied and you would not be charged a fee. Checks/Electronic Transfers: We would not pay the check and would charge you a non-sufficient funds fee of \$___. [You may also incur a bounced check fee from a vendor.]

- We may charge you the fees above even if you spend only \$__ more than you have in your account.
- [We can charge you a maximum of \$__ in fees per day and \$__ per statement period for spending more than you have in your account.] [There is no limit to the amount of fees we can charge you for spending more than you have in your account, per day or per statement period.]

II. Make Your Choice

Mark the box next to your choice. You can choose that checks/electronic transfers be handled differently than debit card/ATM transactions.

	Your Selection For:	
	Checks / Electronic Transfers	Debit/ATM
1. Transfer funds from another account.	<input type="checkbox"/>	<input type="checkbox"/>
2. Apply for a personal line of credit.	<input type="checkbox"/>	<input type="checkbox"/>
3. Transfer funds from a credit card.	<input type="checkbox"/>	<input type="checkbox"/>
4. Use fee-based overdraft to pay the item.	<input type="checkbox"/>	<input type="checkbox"/>
5. Decline to have the overdraft covered	<input type="checkbox"/>	<input type="checkbox"/>

Customer signature

Printed Name

Date

Account number

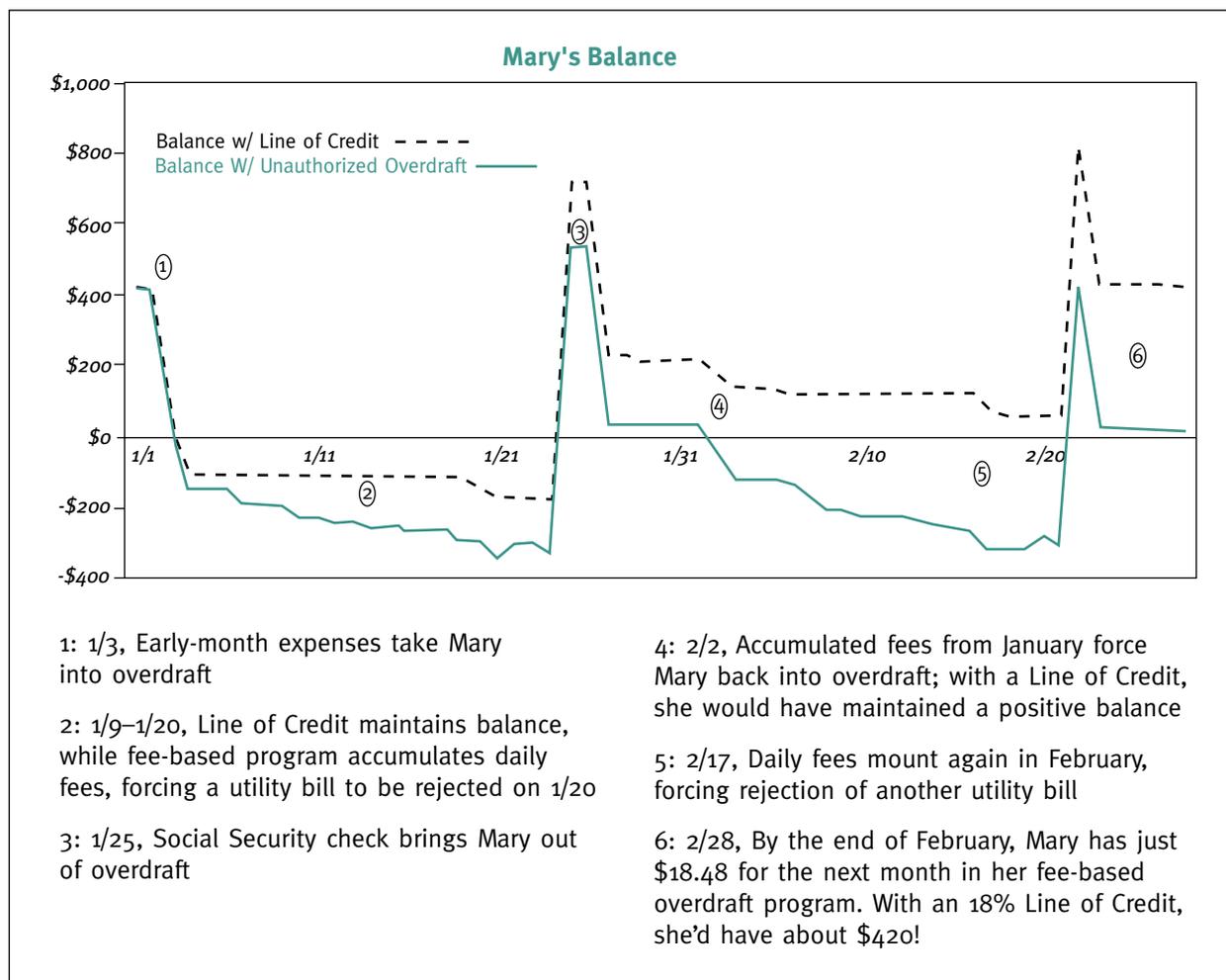
APPENDIX C

Case Study

Case Study: A Social Security Recipient's Experience with Overdraft Fees

Our data allows us to recreate periods of time in a person's checking account activity, to provide snapshots of the broad trends in the data. Here, we track the checking account activity of a panelist (aka "Mary") entirely dependent on Social Security income for the months of January and February 2006.

Figure 3. Representation of account balance of panelist "Mary" January–February 2006



Mary begins the year 2006 with \$420.56 in her checking account, held at a large national bank. She makes a \$380 ATM withdrawal and several smaller point-of-sale purchases on January 3, comes up short, and is overdrawn by January 4. She incurs a \$34 overdraft fee for the initial overdraft. After two more purchases, and two more overdraft fees, she finds herself almost \$200 below zero on January 9.

For the next eleven days, Mary doesn't spend any money from her checking account, but her checking account loses money, nonetheless. Her bank charges her a fee of \$7 a day because of her ongoing negative balance. By the time a scheduled electronic withdrawal is made to pay a bill for \$32.38 on January 20, Mary's account is overdrawn by more than \$300, and the bank rejects the transaction. Her bill goes unpaid, although the bank continues to charge daily negative-balance fees.

Finally, on January 25, Mary receives her monthly Social Security check of \$904. However, her account is already \$335 overdrawn and she still has an additional \$500 in expenses for the month. Once these payments are made, Mary only has \$31.09 left to live on until her next Social Security check comes in late February. Because of this, Mary almost immediately has a negative checking account balance again, once she makes three small (\$20 or less) purchases on February 1. Over the next two days, Mary incurs two overdraft fees because of these purchases and conducts another transaction for \$50, which also results in an overdraft.

Mary does not make any more purchases between February 8 and February 17. However, the bank again continues to charge her a fee of \$7 a day because of her ongoing negative balance. On February 18, an automatic bill payment causes Mary's account to go even farther into the red—a transaction that the bank approves even though her account is already below zero and she cannot even repay the \$7 daily negative balance fee.

Once Mary's account dips to \$314.91 *below zero*, the bank finally begins to refuse additional transactions, rejecting a utility bill for another month. The \$7 daily negative balance fees continue to be assessed through February 21.

Finally, on February 22, Mary's Social Security check comes in, and the account balance ends up above \$400 once the bank subtracts the overdraft fees. Unfortunately, because Mary still has to pay her end of the month expenses totaling about \$410, she is left with only \$18.48 to tide her over until the end of March. This meager sum—even less than the \$31.09 she had to make ends meet after being charged for overdrafts in February—virtually guarantees that Mary will continue to remain trapped in a cycle of accumulating overdraft fees month after month.

In January and February, Mary paid \$448 in overdraft fees in return for receiving \$210.25 in credit from her bank, and was forced to live on \$20 from a Social Security check of nearly \$1,000. If Mary's bank had instead offered her an 18 percent APR line of credit to cover overdrafts, she would have only paid about \$1 in total fees for her overdrafts.

In the figure on page 9, Mary's account balance is shown in green, and her account balance had *she been enrolled in an 18 percent line of credit* is shown in black and dashed. By the end of the two months with a line of credit, Mary's balance would have been \$420, more than enough to meet her remaining expenses until the next Social Security check. In addition to this, her payments to the utility company would have been approved because her account would not have been over \$300 overdrawn, thus saving her non-sufficient funds fees and keeping her utility account current. Most importantly, the cycle of having the bulk of her monthly income stripped away to repay high overdraft fees, leaving little to use for the current month's bills—and therefore making Mary more vulnerable to incurring yet more overdrafts—would be broken.

If Mary's bank had instead offered her an 18 percent APR line of credit to cover overdrafts, she would have only paid about \$1 in total fees for her overdrafts.
