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via electronic transmission

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

Re: Regulation E; Docket No. R-1343
Proposed Comment to Limit the Ability of a Financial Institution to Assess an Overdraft Fee

Dear Federal Reserve Board of Governors:

My firm represents millions of elderly and disabled consumers who have established direct deposit accounts to receive Social Security, SSI, and other public benefits from the U.S. Treasury. My firm and I also represent in litigation other consumer depositors whose accounts are pillaged by national banks to satisfy their voracious and unrelenting appetite for fee income, including non-sufficient ("NSF") fees when the *banks* make the unilateral decision to "overdraft" an account.

I support the proposed requirement that would require financial institutions to obtain consumers' affirmative consent (or opt-in) before any overdraft fees or charges may be imposed on consumers' accounts.

Banks should get explicit permission before enrolling customers in the most expensive overdraft system, automatically covering overdrafts and charging high fees, and should be stopped from using unfair practices to increase their overdraft fees.

What's At Stake?

Particularly in the economic times we live in, overdrafting accounts – lending customers money they don't have – exacerbates personal family situations solely to incentivize a bank's addiction to fee income. There is no reasonable public policy which supports this.

Prevailing Overdraft Practices Artificially Drive Up Fees.

Banks and credit unions now enroll many of their account holders into the most expensive option for covering overdrafts – an option customers generally don't want and didn't

*ADMITTED IN CALIFORNIA AND CONNECTICUT
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ask for – and leave them without the information they need to protect their funds. Under these systems, financial institutions routinely approve uncovered transactions without warning their customers of a deficit in their accounts, and charge an average $34 fee for each incident, even when the uncovered purchase is for just a few dollars.

Fees Vastly Outweigh Shortfalls.

Almost half of all overdrafts (46%) are triggered by debit cards at the ATM or the point of sale. These overdrafts could be easily prevented with a warning or denial electronically. Banks intentionally do not warn or deny because they know a majority of bank customers would decide not to make the transaction *and* they collect NSF fees per transaction of $32. Most debit point-of-sale overdrafts are small, averaging less than half this $34 fee, meaning that these overdraft loans cost nearly $2 for every dollar advanced to cover the shortfall.

Unfair Practices.

Unfair practices include holding deposits longer than necessary and clearing daily transactions from the highest to the lowest, which enables a bank to charge more fees than are warranted. Indeed, Bank of America charges up to $160 per day ($32 per transaction). Banks and credit unions are collecting $17.5 billion per year in abusive overdraft fees, higher even than the $15.8 billion extended in funds to cover the overdrafts.

***Miller v. Bank of America*, Case No. S149178 (Cal. Supreme Court Pending)**
A Case In Point

My firm is co-lead counsel for the California statewide class in *Miller v. Bank of America*. *Miller* clearly demonstrates how the U.S. Department of Justice has sided with large national banks engaged in predatory behavior towards the most vulnerable people in the United States. Rather than siding with low income elderly and disabled people whose exempt Social Security and disability benefits are being seized by the bank to collect overdraft fees, the Justice Department has consistently sided with Bank of America and the banking industry in arguing that banks are immune from generally applicable state consumer protection laws designed to protect these very benefit payments.

From the perspective of federal policy, the *Miller* case exemplifies how U.S. banking regulation is non-existent and has failed consumers. Banks and thrifts get to select their regulators – they pick if they want to be regulated by the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision, or state banking agencies. These agencies receive most of their budget from user fees – if a bank like Bank of America chooses to be regulated by one agency over another, the agency gains millions of dollars. In fact, several years ago Bank of America paid more than 10 percent of the OCC's annual budget. The OCC sees the banks as their "clients," and the OCC – and the Justice Department – have consistently sided with the bank against more than one million elderly and disabled low income Americans in California in this case.

In 1974, the California Supreme Court held in *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 521 P.2d 441 (1974), that a national bank acting as a creditor could not use its internal right of setoff to collect exempt funds. These monthly benefits were intended by Congress and the states to cover the recipient's basic necessities of life - housing, food, utilities and medical care. As the evidentiary record at trial in the Miller case makes clear, these benefits - which are directly deposited into recipients' accounts - are seized by Bank of America through its internal procedure of "setoff" to satisfy its exorbitant bounced check or NSF fees. The jury and the trial judge independently found that the bank violated California law in seizing these exempt Social Security funds to collect debts from any account and representing that it had a right to do so.

National banks encourage low income elderly and disabled people to write checks on accounts with insufficient funds; then Bank of America seizes the incoming exempt Social Security and disability benefits that are directly deposited into those accounts to collect overdraft fees of $32 per check up to $160 per day. Under the Bush administration, the Justice Department consistently sided with Bank of America and the banking industry in arguing that banks are immune from generally applicable California state consumer protection laws designed to protect these very "social safety-net" benefit payments, and that these state consumer protection laws are preempted by federal banking laws.

The *Miller* case presents fundamental issues of national policy governing the seizure of exempt Social Security and other public benefits for eligible recipients. Specifically, this case raises the question of what limitations, if any, apply to the ability of national banks acting as creditors to take those exempt funds as payment of debts. The case is presently fully briefed before the California Supreme Court, which will hear oral argument on April 7, 2009, and issue a decision within 90 days thereafter.

This case has broad implications for millions of Californians (and millions more nationwide) who are elderly or disabled and who subsist in large part on Social Security and other public benefits. These monthly benefits were intended by Congress and the states to cover the recipient's basic necessities of life – housing, food, utilities and medical care. As the evidentiary record at trial in the *Miller* case makes clear, these benefits – which are directly deposited into recipients' accounts – are seized by Bank of America through its internal procedure of "setoff" to its exorbitant bounced check or non-sufficient funds (" NSF") fees. The jury and the trial judge independently found that the bank violated California law in seizing these exempt Social Security funds and repeatedly representing that it had the right to do so, despite its knowledge that seizing exempt funds violated the law.

Background.

The *Miller* case was filed as a statewide class action in August 1998, by Paul Miller, an SSI recipient, whose incoming social security benefits were seized by the bank. The trial court certified a California class of an estimated 1.3 million customers who had Social Security direct deposit accounts with Bank of America in California between August 1994, and December 31, 2003. All those accounts were subject to the bank's practices of seizing exempt federal benefits after receipt electronically. The bank's practices continue to this day.

The case was tried in early 2004. The jury concluded that the bank violated California law by routinely seizing exempt Social Security and public benefits to pay itself back debts that it claims customers owe. The jury awarded damages exceeding $75 million in NSF fees taken from the exempt funds of class members and also awarded special damages of $1,000 per class member under a remedial provision of the CLRA protecting the elderly and disabled from acts causing substantial economic or emotional harm. The trial court permanently enjoined the bank from continuing to misrepresent the law and to stop seizing exempt funds from class members to satisfy overdraft fees.

In November 2006, the California Court of Appeal reversed the judgment in its entirety. *Miller v. Bank of America*, 51 Cal.Rptr. 3d 223 (Cal.App.1 Dist., Div. 3, 2006).

The U.S. Government Supports the Bank.

Since before trial in 2003, Bank of America has been supported by the Justice Department and the Office of the Comptroller of the Currency (OCC). Beginning post-trial, the United States of America has filed several *amicus curiae* briefs consisting of the OCC, the Treasury Department and the Social Security Administration represented by the Department of Justice. Under the Bush administration, the United States has disgracefully opposed the Social Security recipients in *Miller* and has taken the position in favor of the bank that California law is preempted. What is especially alarming is that the federal government has done so in spite of the fact that, according to the OCC regulations themselves, they do not preempt state laws concerning the right to collect debts. This position puts the United States government squarely against its most needy citizens who now, perhaps more than ever, depend upon their monthly benefits for the necessities of life. It is hoped that under the Obama administration, at a minimum, the departments and agencies of the United States government will divorce themselves from the position of the Bank of America. This is the kind of change that embattled, extremely vulnerable Social Security recipients should be able to believe in.

Attachment.

Attached is an article addressing the plight of the elderly and disabled living on Social Security benefits and the devastating effects on them of bank seizure for fees and debts. The briefing in *Miller* is available from James C. Sturdevant at jsturdevant@sturdevantlaw.com.

CONCLUSION

In conclusion, the proposed "option" provision should be adopted for all of these reasons.

Sincerely,

James C. Sturdevant

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enclosure

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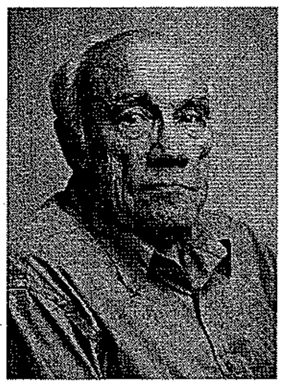

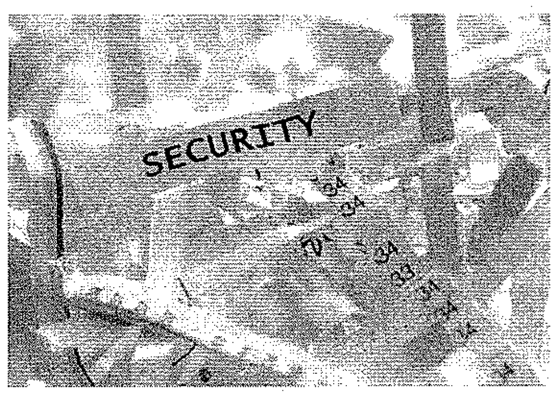

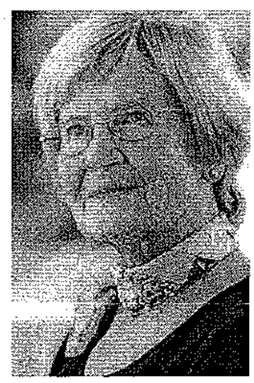

Shredded Security
Overdraft practices drain fees from older Americans

Leslie Parrish and Peter Smith
Center for Responsible Lending

June 18, 2008

CENTER FOR RESPONSIBLE LENDING

www.responsiblelending.org

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EXECUTIVE SUMMARY

As older Americans face a growing range of financial challenges, prevailing bank overdraft practices further threaten their security by draining income and social security benefits in the collection of excessive fees.

Typically, consumers are automatically enrolled in their bank or credit union's most expensive version of overdraft protection when they open a checking account. Under this system, the bank approves transactions that cause the customer's account to go below zero in return for a fee of around $34 per incident. Because consumers are enrolled in these expensive overdraft programs without their consent and overdraft loans are made without the account holder's approval, we call these transactions "unauthorized overdrafts."

The largest share of unauthorized overdrafts is caused by debit card transactions, either at the ATM or checkout counter. Because these purchases are typically for very small amounts, the overdraft fee often greatly exceeds the amount of credit extended. Consumers making small purchases with their debit card at a variety of locations over the course of a day can easily find themselves owing hundreds of dollars in overdraft fees to their bank before they are aware of being overdrawn.

The Center for Responsible Lending analyzed a large, commercially-available database of personal bank account transactions. In the last 12 months, we have published findings that overdraft lending practices cost consumers $17.5 billion per year by artificially increasing the incidence of overdrafts, which now trigger a fee averaging $34 for all age groups. We found that young adults pay nearly a billion dollars of those fees.

In this report, we focus on account holders 55 years and older, and find that:

- Those relying heavily on Social Security income pay nearly $1 billion in fees for unauthorized overdrafts. Overall, Americans 55 and older pay $4.5 billion in overdraft fees.
- Debit card transactions are the most frequent trigger of unauthorized overdrafts for older adults, despite the fact that they are less likely to use debit cards than their younger counterparts. Account holders who overdraft using a debit card pay back far more in fees than they receive in credit.
- Survey respondents 55 and older overwhelmingly want the option to avoid unauthorized overdrafts and would rather be declined at the checkout if their debit card purchase would otherwise result in a fee averaging over $30.

Recommendations

Prevailing overdraft practices have failed to protect the income of older Americans. Overdraft policies should be reformed so that they strengthen, rather than threaten, the financial security of older Americans.

- Federally-protected income from Social Security should not be permitted to be automatically taken to repay overdraft loans and bank fees;

- Banks and credit unions should be prohibited from manipulating the order in which charges clear and the time for which deposits are held to artificially increase overdraft fees;

- In addition, policymakers should take the following steps to protect consumers and provide them with choices and information regarding overdraft loans:

  - Require banks and credit unions to provide consumers with the choice to "opt-in" to overdraft loan programs, rather than automatically including it as an account feature;

  - Require banks and credit unions to comply with the Truth in Lending Act for high-cost overdraft loans by disclosing their cost in terms of an annual percentage rate;

  - To prevent consumers from falling into a cycle of debt, limit the number of high-cost overdraft loans a bank or credit union can make to a customer per year;

  - Require banks and credit unions to warn customers whenever an ATM withdrawal or debit card purchase will overdraw an account and give them a choice of whether to proceed or to cancel the transaction; and

  - Allow banks and credit unions to cover ATM and debit card POS overdrafts without warning only if the customer has elected, in writing, to participate in a lower-cost protection program that pays overdrafts from a linked savings account or line of credit.

- Finally, older adults should consider only doing business with banks that allow them to link their checking account to their savings account, or that offer them a less expensive line of credit for back-up funds so they can avoid unauthorized overdraft fees.

BACKGROUND

Americans in or nearing retirement age face a number of new threats to their financial well-being. No longer can they count solely on pension plans and social security benefits to carry them through, but more typically must also save for their own retirement, often through a 401(k) plan or an IRA.[1] Much of these savings will be needed for rising health care costs: retired couples are projected to need between $300,000 and $550,000 to cover health expenses such as long-term care.[2] Perhaps most alarming, more than one out of every four retirees (28 percent) have no savings of any kind.[3]

At the same time, many adults aged 55 and older face a growing debt burden. Though they currently make up only five percent of all bankruptcy filers, adults 65 or older now seek out bankruptcy protection at the fastest growing rate among any age group.[4] Credit card debt is one example of the growing liabilities Americans 65 years and older face. While these households have less than $25,000 in annual income on average, they carry an average balance of $4,041—an 89 percent increase from ten years ago.[5]

Finally, more older Americans are carrying mortgages on their homes rather than owning them outright. In 2004, 36 percent of households age 55 and older had a mortgage on their home—up from just 24 percent in 1992.[6] The balances on these mortgages have grown 63 percent during this 12-year period to a median of $60,000.[7] In addition, seniors are vulnerable to problems in the subprime mortgage lending market; homeowners age 65 and older are three times as likely to hold a subprime mortgage as the youngest homeowners (those less than 35 years old).[8]

These trends represent a growing risk of financial insecurity for older Americans. Compared to 20 years ago, retirement wealth is lower for all but the most affluent seniors, and 14 percent of 64 year olds have a negative net worth.[9] In the future, nearly half (45 percent) of households are projected to be at risk of being unable to maintain their current standard of living once they retire.[10]

A new threat from unexpected quarters

Americans in or nearing retirement should be aware of another risk to their finances: high fees charged by banks and credit unions for overdraft loans.

Historically, financial institutions occasionally honored uncovered checks as a courtesy. If an account holder attempted to withdraw funds from an ATM or make a purchase with their debit card without having enough money in their account, the transaction would simply be declined—at no cost to the consumer. Those who wanted a formal system of overdraft protection could sign up for transfers from a line of credit, credit card, or savings account linked to their checking account.

Default Overdraft System

- Unauthorized overdraft loans carrying average $34 fee per transaction

Low-Cost Account Protection

- linked line of credit (typically 18% APR)
- linked credit card
- linked savings account

In recent years, however, most banks and credit unions have adopted high-cost, fee-based overdraft loan systems, under which a customer's debit card purchases, ATM withdrawals, checks, and electronic transactions are routinely processed even when they lack sufficient funds. The customer is then charged a fee averaging $34 for each incident that brings their account below zero and for each additional transaction when they are in the red. The bank withdraws the amount overdrafted from the customer's next deposit.

Account holders do not authorize this type of overdraft—they are automatically enrolled as part of the opening of their checking account.

Recent CRL research has found that these unauthorized overdrafts represent a growing share of revenue for banks and credit unions. In 2006, CRL estimates that financial institutions generated $17.5 billion in fee income in return for extending only $15.8 billion in credit through these programs.[11] Most of the transactions triggering these overdrafts were small debit card purchases in which consumers paid, on average, $1.94 in fees for every one dollar borrowed.[12]

Recent growth in bank overdraft fee income has been fueled by unfair practices that include (1) minimizing transaction time to withdraw charges from a checking account, while delaying the amount of time it takes for deposits to be available for use; (2) increasing the likelihood of multiple overdrafts by re-ordering when checks and debit transactions clear so that higher-dollar items are withdrawn first, no matter the order in which they were made; and (3) approving debit card point-of-sale transaction or ATM withdrawal transactions even when an overdraft will result.

A CRL survey finds that the vast majority of consumers—regardless of age—would prefer that their bank or credit union offer them the choice of whether to have overdraft coverage rather than automatically including this feature in their account. They would also prefer to have debit card transactions—the leading trigger of overdraft fees—declined rather than pay a $34 fee for an overdraft loan so that the purchase is approved.[13]

In their own words:

"In June of this year my mother discovered a bill from [major national bank]...Charges on the bill amounted to over $800.00 and was the result of over-draft protection charges and fees. My father is eighty-eight years old and has been diagnosed with dementia."
Diane, from a letter to her Congresswoman.

"These are not the laws for people that have a lot of money, these are the laws for people who don't have much money... who live from paycheck-to-paycheck, because if you don't have to, you aren't bothered by overdraft charges. Or if you do get one, it's not much out of your budget."
Jackie, a 71-year-old fitness instructor for seniors, who closed her account with a major bank after she racked up over $500 in overdraft charges, from an interview with CRL.

"I'm on disability so money can really get tight, if you walk into a [major national bank] between the first and third of every month you will hear people complaining to the tellers about overdraft Fees. There are a lot of people that are in tears most of them are elderly or disabled in some sort of way. [This bank] has one of the highest overdraft fees that I have encountered (thir[t]y five dollars). I closed my account there because of their practices...a hundred dollars or more is a lot of money to pay out in overdraft fees especially when you're on a fixed income."
Sheila, from an email complaint to CRL.

About the Data

For our analysis, CRL used data from a consumer panel tracked by Lightspeed Research Inc. Our analysis included data for 5,681 households whose transaction-level online and offline banking account activity was electronically captured. The dataset contained 18 months of data on 3,279,522 transactions of these households with accounts at the 15 largest banks in the U.S.[14]

FINDINGS

1. Those relying heavily on Social Security income pay nearly $1 billion in fees for unauthorized overdrafts. Overall, Americans 55 and older pay $4.5 billion in overdraft fees.

Last year, using transactional data from the 15 largest banks in the United States, CRL found that American consumers pay $17.5 billion in unauthorized overdraft fees every year. Americans 55 years or older pay 26 percent of these overdraft fees, losing $4.5 billion every year. Many of these fees are paid by retirees and others who are largely dependent on Social Security income for their basic needs.

When Social Security recipients are charged for an unauthorized overdraft, this protected income is used to pay back loans that are unasked for and often unwanted. The fact that unauthorized overdraft loans are not voluntarily chosen and are controlled by the bank distinguishes them from nearly every other form of credit, because for other types of loans, protected income such as Social Security cannot be claimed as repayment.

For example, a retiree who uses a line of credit or makes a purchase on a credit card retains control over Social Security income coming into their account, and pays back their debt through their own initiative, choosing whether to use Social Security funds to make payments. In contrast, a person owing overdraft loan fees to their bank has that money taken directly from their next incoming Social Security check before they are granted access to the funds. In our data, 34 percent of overdraft fees charged to Americans 55 years or older are charged to Americans receiving Social Security income.[15]

The average Social Security recipient gets a monthly check for about $990 (or just under $12,000 annually).[16] Nearly two-thirds (65 percent) of Social Security recipients depend on these funds for at least half of their income. We estimate that over $981 million is drained from the accounts of these Social Security recipients to pay back overdraft fees each year. Likewise, 34 percent of Social Security recipients are almost wholly dependent on this monthly benefit—which makes up at least 90 percent of their income. About $513 million is diverted from these most vulnerable recipients to pay for expensive overdraft loans.

Table 1. Share of Social Security benefits drained through overdraft loans

Total overdraft fees generated by adults age 55+	$4.5 billion
Overdraft fees generated by Social Security recipients (34% of total)	$1.5 billion
Share of Social Security recipients who depend on this benefit for at least 50% of their income[17]	65%
Overdraft fees drained from people who depend on Social Security for 50% of more of their income	**$982 million**
Share of Social Security recipients who depend on this benefit for 90% or more of their income[18]	34%
Overdraft fees drained from people who depend on Social Security for 90% of more of their income	**$513 million**

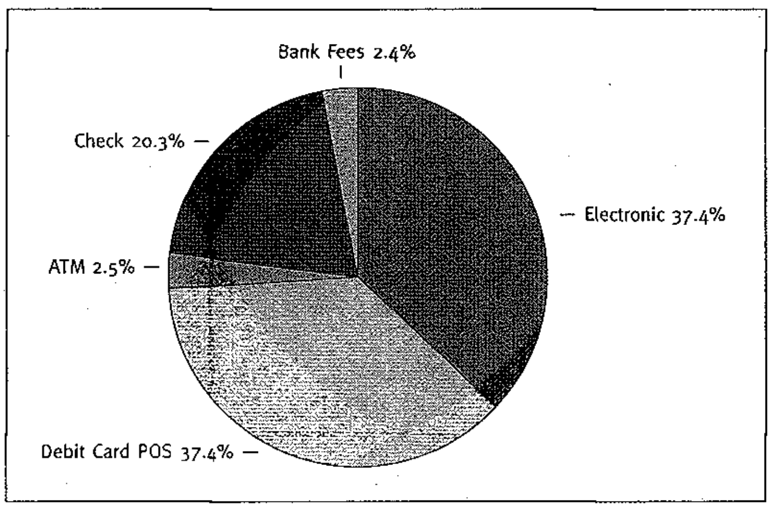
Since Social Security income is generally disbursed monthly, many older Americans who are charged overdraft fees get only one chance per month to pay these loans back. Because some large banks charge daily fees for maintaining a balance below zero, Social Security recipients in particular can incur substantial fees.

2. Debit card transactions are the most frequent trigger of unauthorized overdrafts for older adults, despite the fact that they are less likely to use debit cards than their younger counterparts. Account holders who overdraft using a debit card pay back far more in fees than they receive in credit.

In keeping with trends that CRL has found in the transactions of all American consumers, Americans 55 years or older overdraft by using debit cards at the point-of-sale more than by writing checks or by making ATM withdrawals. Nearly 40 percent of their overdraft transactions are triggered by debit card transactions at the checkout counter (commonly called point of sale, or POS, transactions).

Debit card POS transactions in particular tend to be for smaller amounts, and can be clustered together with other debit card purchases, increasing the number of overdraft fees when consumers are not aware that their balance is low. Electronic payments trigger a large share of overdrafts as well. These include online debit card purchases, as well as online bill payments.

Figure 1. Percentage of overdraft fees by trigger



The average debit card transaction triggering an overdraft is for a $26 purchase. For this transaction, the bank makes an average loan of $19.95, or the amount overdrafted, and charges an average fee of $33 for each incident. (The average for older adults is $1 lower than the average for all adults. See Table A2.) This amounts to an average of $1.65 in fees per dollar borrowed.[19] Thus, older adults pay more in fees than they receive in credit for the average debit card purchase triggering an overdraft.

Table 2. Cost of overdraft loans triggered by debit cards used at the point of sale

	Median Fee	Median Transaction	Median Overdraft Loan	Median Fee per $1 Borrowed
Older Adults (Age 55+)	$33.00	$26.00	$19.95	$1.65

Overall, older adults follow trends of the general population of checking account holders, though some minor differences exist. For example, while adults of all ages have debit card transactions—either at the point of sale or ATM machine—as their most common trigger (44 percent), older adults' overdrafts are spurred slightly less by these means (40 percent).

Account holders 55 and older are less likely to either possess or use a debit card. For example, only 41 percent of account holders age 55-64 and 21 percent of those 65 or older use a debit card. In contrast, nearly 80 percent of account holders under age 35 report using a debit card.[20] Additionally, when older adults do overdraft their account using a debit card, the purchase is for a somewhat greater amount—a $26 purchase rather than one for $20 for adults overall.

3. Survey respondents 55 and older overwhelmingly want the option to avoid unauthorized overdrafts and would rather be declined at the checkout if their debit card purchase would otherwise result in a fee averaging over $30.

CRL conducted a survey in January 2008 to gauge consumer preference on overdraft programs. Like their younger counterparts, most adults aged 55 and over (84 percent) reported that they would prefer to have a choice of whether this feature was a part of their account.[21] In addition, over three-quarters of respondents 55 and over would rather have a debit card transaction declined than have their purchased approved and an overdraft fee charged.

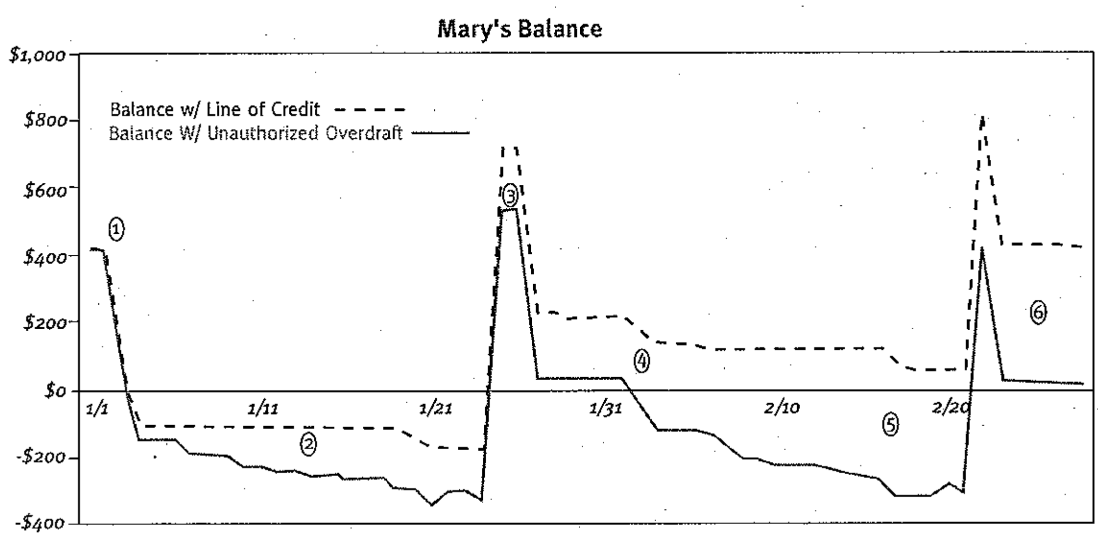
Table 3. Among those with a preference, respondents who would prefer their debit card transaction to be declined if it would otherwise result in an overdraft

	Percent of respondents 55 and over who would prefer transaction be declined
$5 debit card transaction	77%
$20 debit card transaction	78%
$40 debit card transaction	78%

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



1: 1/3, Early-month expenses take Mary into overdraft

2: 1/9–1/20, Line of Credit maintains balance, while fee-based program accumulates daily fees, forcing a utility bill to be rejected on 1/20

3: 1/25, Social Security check brings Mary out of overdraft

4: 2/2, Accumulated fees from January force Mary back into overdraft; with a Line of Credit, she would have maintained a positive balance

5: 2/17, Daily fees mount again in February, forcing rejection of another utility bill

6: 2/28, By the end of February, Mary has just $18.48 for the next month in her fee-based overdraft program. With an 18% Line of Credit, she'd have about $420!

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.

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.

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.

RECOMMENDATIONS

Prevailing overdraft practices have failed to protect the income of older Americans. Overdraft policies should be reformed so that they strengthen, rather than threaten, the financial security of older Americans.

- Federally-protected income from Social Security should not be permitted to be automatically taken to repay overdraft loans and bank fees;
- Banks and credit unions should be prohibited from manipulating the order in which charges clear and the time for which deposits are held to artificially increase overdraft fees;
- In addition, policymakers should take the following steps to protect consumers and provide them with choices and information regarding overdraft loans:
  - Require banks and credit unions to provide consumers with the choice to "opt-in" to overdraft loan programs, rather than automatically including it as an account feature;
  - Require banks and credit unions to comply with the Truth in Lending Act for high-cost overdraft loans by disclosing their cost in terms of an annual percentage rate;
  - To prevent consumers from falling into a cycle of debt, limit the number of high-cost overdraft loans a bank or credit union can make to a customer per year;
  - Require banks and credit unions to warn customers whenever an ATM withdrawal or debit card purchase will overdraw an account and give them a choice of whether to proceed or to cancel the transaction; and
  - Allow banks and credit unions to cover ATM and debit card POS overdrafts without warning only if the customer has elected, in writing, to participate in a lower-cost protection program that pays overdrafts from a linked savings account or line of credit.
- Finally, older adults should consider only doing business with banks that allow them to link their checking account to their savings account, or that offer them a less expensive line of credit for back-up funds so they can avoid unauthorized overdraft fees.

APPENDIX

Methodology

Many of the results and methods in this report rely on the results and methods from two of CRL's earlier overdraft reports, *Debit Card Danger* and *Out of Balance*. Those reports are available online at http://www.responsiblelending.org/pdfs/Debit-Card-Danger-report.pdf and http://www.responsible-lending.org/pdfs/out-of-balance-report-7-10-final.pdf.

Identifying overdrafts from panelists age 55 and over

For our previous reports, CRL analyzed 18 months of bank account transactions from participants in a consumer tracking panel managed by Lightspeed Research. We selected panelists who participated in the panel for at least six consecutive months within the 18-month window, which was from January 2005 though June 2006, and had at least one overdraft incident.

For this report, we used the same weighted subset of account holders and unauthorized overdrafts. From this base of 4,037 consumers, we identified 2,347 unauthorized overdraft transactions made by 270 panelists aged 55 or above. In all, older Americans make up 34.4 percent of total panelists and accounted for 26.2 percent of unauthorized overdraft transactions.

Older Americans pay about $4.45 billion in unauthorized overdraft fees each year

Using the full original panel, we calculated that older Americans were responsible for 26.2 percent of all instances in which an unauthorized overdraft fee was levied. We took that percentage of the aggregate cost of unauthorized overdraft loan fees ($17.5 billion, calculated in *Out of Balance*), adjusted to account for the difference in median fee amount ($34 for full panel, $33 for older Americans), and arrived at our total: consumers age 55 or older pay $4.45 billion in unauthorized overdraft loan fees each year.

$17.5 B * (.262) * ($33/$34) = $4.45 B

Overdraft fees paid by Americans on Social Security income make up over a third of overdraft fees charged to older Americans.

We flagged transactions in our data as coming from Social Security, and identified 791 unauthorized overdrafts charged to panelists who received Social Security income, which is 33.7 percent of the 2,347 unauthorized overdrafts identified as charged to older Americans. Since some Social Security payments may be widows' pensions or disability payments, we selected panelists age 62 or older, and thus eligible for Social Security retirement income, to better isolate retirees. We identified 997 unauthorized overdraft loans made to panelists age 62 or older, 560 of which, 56.2 percent, were made to panelists who received Social Security income.

Debit card transactions are the leading cause of overdraft loans for older Americans

As in our previous research, we identified fee-based overdraft loans and the transactions that triggered them for this report. We analyzed the accounts of panelists age 55 and older to determine which type of transaction caused an overdraft: a debit card POS, ATM, other electronic transaction, or check. In some cases, more than one transaction type could have triggered an overdraft. For example, if a debit card POS transaction and an ATM withdrawal occurred on the same day and we did not have enough information to identify the exact trigger, it was coded as a "mixed trigger."

We broke down the 2,347 unauthorized overdrafts in our sample by triggering transaction type, and found that 37.4 percent are caused by debit card POS transactions, and that 39.9 percent are caused by either debit card POS or ATM transactions.

Table A1: Type of transaction triggering overdraft loans by percentage

Transaction Type Triggering Unauthorized Overdraft Loan	Percent
Total Debit Card POS	37.4%
ATM	2.5%
Check	20.3%
Electronic Transaction	37.4%
Bank Fees	2.4%

Older adults pay $1.65 for every $1 borrowed for debit card overdrafts.

We randomly sampled 60 unauthorized overdraft incidents and calculated several relevant statistics, using the account history surrounding each incident. We looked at fee amount, triggering transaction amount, days required to repay the loan and fee, fees assessed per dollar borrowed, and overdraft loan amount (usually only a portion of the triggering transaction amount, as in the case of a $26 purchase causing an overdraft of $19.95). In selected cases where these values couldn't be calculated because of ambiguities in the account data, new cases were randomly selected.

Table A2: Median fee for debit-triggered overdraft loans

	Median Fee	Median Transaction	Median Overdraft Loan	Median Fee per $1 Borrowed
Older Adults (Age 55+)	$33	$26.00	$19.95	$1.65
All Adults	$34	$20.00	$16.46	$1.94

NOTES

1 For discussions on the shift from defined benefit pension plans to defined contribution plans such as 401(k)s, see *The Retirement System in Transition: The 2007 Retirement Confidence Survey*, Employee Benefit Research Institute (April 2007), available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_04a-20079.pdf and John Goodman and Peter Orszag, *Common Sense Reforms to Promote Retirement Security*, the Retirement Security Project at the Brookings Institution (2005), available at http://www.retirementsecurityproject.org/pubs/File/RSP-PB_CommonSense_3.pdf.

2 Paul Fronstin, *Savings Needed to Fund Health Insurance and Health Care Expenses in Retirement*, Employee Benefit Research Institute (July 2006).

3 *2008 Retirement Confidence Survey*, Employee Benefit Research Institute (April 2008).

4 Teresa Sullivan, Deborah Thorne, and Elizabeth Warren. *Young, Old, and In Between: Who Files for Bankruptcy?* Norton Bankruptcy Law Advisor (2001).

5 Heather McGhee and Tamara Draut. *Retiring in the Red: The Growth of Debt Among Older Americans*, Demos (January 19, 2004). Available at http://www.demos.org/pub101.cfm.

6 Interview with Craig Copeland of the Employee Benefit Research Institute, in Kathy Chu, *Retirees Up Against Debt*, USA Today (March 2, 2007).

7 Ibid.

8 Sharon Hermanson. *The Subprime Market: Wealth Building or Wealth Stripping for Older Persons*, AARP (2007). Available at http://assets.aarp.org/rgcenter/consume/m_6_mortgage.pdf.

9 Alicia H. Munnell, Anthony Webb, and Francesca Golub-Sass. *Is There Really a Retirement Savings Crisis? An NRRI Analysis*. Center for Retirement Research at Boston College (August 2007). Available at http://crr.bc.edu/images/stories/Briefs/ib_7-11.pdf.

10 Ibid.

11 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 (July 11, 2007). Available at http://www.responsiblelending.org/issues/overdraft/reports/page.jsp?itemID=33341925.

12 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 (January 25, 2007). Available at http://www.responsiblelending.org/issues/overdraft/reports/page.jsp?itemID=31469347.

13 Leslie Parrish. *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending (April 16, 2008) at http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf.

14 While participants in the Lightspeed panel are demographically representative of the U.S. population, the requirement that participants have internet access may lead to selection bias. A survey conducted by the Pew Internet & American Life Project from October 24-December 2, 2007 reveals that while 72 percent of adults 50-64 use the internet, only 37 percent of adults 65 or older do.

15 When we look only at panelists eligible (age 62 or older) for Social Security retirement income, we find that 56 percent of overdraft fees charged to these panelists are charged to panelists who receive Social Security retirement income.

16 In its *Monthly Statistical Snapshop* from April 2008, the Social Security Administration reports an average monthly Social Security benefit of $990.30.

17 *Fast Facts & Figures about Social Security* 2007, Social Security Administration Office of Policy. Available at http://www.socialsecurity.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.html.

18 Ibid.

19 Though still extremely expensive, this fee per dollar borrowed is slightly less than that paid by the overall population, because older adults tend to overdraft on somewhat larger debit card transaction amounts.

20 For example, a Federal Reserve Board study found that the older a checking account holder, the less likely they are to use a debit card. See Ron Borzekowski, Elizabeth K. Kiser, and Shaista Ahmed. *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Responses*. Federal Reserve Board (April 2006.) The survey results are below:

Percent using a debit card

Age	Checking Account Holders
18–24	78%
25–34	79%
35–44	64%
45–54	53%
55–64	41%
65 or older	21%

21 For complete survey findings and top-line responses, please see *Consumers Want Informed Choice on Overdraft Fees and Banking Options* (April 16, 2008) at http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf.

About the Center for Responsible Lending

The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

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