March 30, 2009

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

Dear Secretary Johnson:

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

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

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

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

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

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\(^1\) Several of the undersigned groups are submitting separate, more specific comments as part of this process. This letter is intended to convey our united request for the Board to require institutions to obtain consumers’ affirmative consent before enrolling them in a fee-based overdraft program.
an order that maximizes overdraft fees, as provided by H.R. 1456, the Consumer Overdraft Protection Fair Practices Act.

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

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

Sincerely,

ACORN
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Americans for Fairness in Lending (AFFIL)
Black Leadership Forum
Center for Responsible Lending
Chicago Consumer Coalition
Consumer Action
Consumer Federation of America
Consumer Federation of the SE
Consumers Union
Democratic Processes Center, Tucson, AZ
Dēmos: A Network for Ideas & Action
Florida Consumer Action Network
International Brotherhood of Teamsters
Kentucky Equal Justice Center
Kentucky Youth Advocates
Lawyers Committee for Civil Rights Under Law
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
Neighborhood Economic Development Advocacy Project, NYC
Opportunity Finance Network
Privacy Rights Clearinghouse
Public Citizen
Sargent Shriver National Center on Poverty Law
Service Employees International Union
U.S. PIRG
Virginia Citizens Consumer Council