

# Congress of the United States

Washington, DC 20515

May 27, 2009

Ben S. Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Dear Chairman Bernanke:

We write to thank the Federal Reserve Board for bringing attention to abusive overdraft practices through your proposed rule pursuant to Regulation E, while urging you to adopt the stronger opt-in requirement for debit card purchases and ATM withdrawals. An opt-out requirement for these transactions will not adequately protect consumers from abusive overdraft practices.

Overdraft abuses related to debit card purchases and ATM withdrawals are particularly egregious for at least two reasons. First, overdraft fees triggered by these transactions, which could easily be denied at the terminal, often take consumers completely by surprise. Second, an overdraft fee charged on a typical debit card purchase is vastly disproportionate to the amount of the overdraft itself. It is only fair, then, that institutions be required to obtain consumers' *affirmative* consent before enrolling them in fee-based overdraft programs for these types of transactions.

Consumers generally expect a debit purchase or ATM transaction to simply be denied when their account lacks sufficient funds to cover it. They do not expect to be charged a fee averaging \$34 per transaction, and they usually only learn of the fee after the transaction has been processed.<sup>1</sup> In fact, often consumers learn of the fee only after a *series* of fees has been incurred over the course of several days.

Moreover, the typical debit card transaction that incurs a \$34 fee is only \$20, triggering an overdraft of only \$17. Intuitively, we could presume that most customers would not choose to borrow \$17 for a fee of \$34. But we need not presume because the research speaks for itself: Surveys have found that *80 percent of consumers would rather have their debit transaction denied than have it covered for an overdraft fee.*<sup>2</sup> In fact, a survey done just this month found that 80% of consumers who want a choice about overdraft would prefer opt-in over opt-out.<sup>3</sup>

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<sup>1</sup> The FDIC's recent study of overdraft fees found that 89% of surveyed banks for point-of-sale/debit transactions and 71% of surveyed banks for ATM transactions do not notify consumers of overdrafts until after the transaction has been completed.

<sup>2</sup> Center for Responsible Lending, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, CRL Research Brief (Apr. 16, 2008), available at <http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf>.

<sup>3</sup> Center for Responsible Lending, March 2009 Survey of nationally representative sample; complete results to be released shortly.

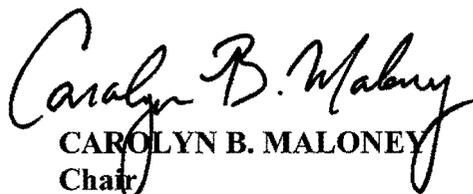
The FDIC's recent study of overdraft fees confirms existing research that exposes the exploitative nature of fee-based overdraft programs. The FDIC found that most banks automatically enroll consumers in fee-based overdraft programs rather than far less expensive alternatives, such as overdraft lines of credit; most banks allow consumers to overdraw their accounts at ATM and debit terminals without first warning them of the overdraft; and most large banks surveyed process transactions from largest to smallest, which maximizes the number of overdraft fees they can charge.

The FDIC's findings compel the Board to take significant action to alter the status quo. As the Board notes in its proposal, behavioral economics research shows that consumers are unlikely to alter the default arrangement. An opt-out arrangement, then, will not significantly alter the status quo. The Board should align the default with what best protects consumers and with what consumers say they want—no overdraft coverage for ATM and debit purchases unless consumers explicitly choose it.

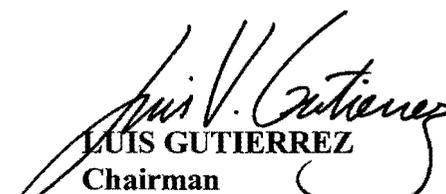
In addition, we urge the Board to immediately address manipulative clearing practices by prohibiting institutions from posting transactions in an order that maximizes overdraft fees, as also provided by H.R. 1456.

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

Sincerely,

  
CAROLYN B. MALONEY  
Chair  
Joint Economic Committee

  
BARNEY FRANK  
Chairman  
Financial Services Committee

  
LUIS GUTIERREZ  
Chairman  
Subcommittee on  
Financial Institutions and  
Consumer Credit