

September 27, 2010

The Honorable Sheila Bair
FDIC
3501 N. Fairfax Drive
Arlington, VA 22226

Dear Ms. Bair:

We, the undersigned civil rights, labor, consumer, housing, community, business, and sustainable and responsible investor groups, write to thank the FDIC for bringing attention to abusive overdraft practices. Your proposed guidance recommends common-sense actions banks should take to treat their customers more fairly, and it is consistent with your important efforts to bring unbanked and underbanked individuals into the banking mainstream. At the same time, we urge you to strengthen your proposal in several key respects in order to bring an end to excessive overdraft fees at FDIC-supervised banks.

Financial institutions earn \$24 billion a year through high-cost overdraft programs.¹ The FDIC's proposal recognizes that high-cost, frequent overdraft fees can cause "serious financial harm" to lower or fixed income customers. Indeed, research has repeatedly found that overdraft fees disproportionately impact lower-income and non-white customers.² And older Americans primarily dependent on Social Security pay \$1 billion annually in overdraft fees.³ Ultimately, high cost overdraft fees drive many vulnerable consumers away from the banking system and into other predatory lending products.

The FDIC's recommendations address several glaring problems with today's overdraft programs, including excessive fees, manipulative transaction posting, and steering. This guidance stands in sharp contrast to the Federal Reserve's new overdraft rules, which address only initial customer consent but fail to address the product itself.

We applaud the FDIC for recognizing that charging a customer more than six overdraft fees within a twelve-month period is excessive. At the same time, we urge you to explicitly tell banks the following: 1) they should provide every customer who wants overdraft coverage the lowest cost overdraft option the customer qualifies for – allowing many customers to avoid any

¹ The majority of overdraft fees (74 percent) are borne by a small percentage (16 percent) of people who overdraft. Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending (April 16, 2008), available at <http://www.responsiblelending.org/overdraft-loans/researchanalysis/final-caravan-survey-4-16-08.pdf>; Lisa James & Peter Smith, *Overdraft Loans: Survey Finds Growing Problem For Consumers*, Center for Responsible Lending (April 24, 2006), available at http://www.responsiblelending.org/overdraft-loans/research-analysis/ip013-Overdraft_Survey-0406.pdf.

² Ibid

³ 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/overdraft-loans/research-analysis/shredded-security.pdf>.

high overdraft fees at all; and 2) they should not, under any circumstances, charge more than six overdraft fees within a twelve-month period.

We also applaud the FDIC's proposal to require that banks 1) stop manipulating the order in which they post transactions to maximize fees and 2) avoid steering frequent overdrafters into high-cost programs while "obscuring" lower-cost alternatives. We commend the FDIC for cautioning that steering activity raises fair lending concerns and will be closely scrutinized. We urge you to make clear that such scrutiny will include close supervision of solicitations aimed at convincing customers to "opt-in" to debit card overdraft coverage; that any such solicitations should clearly disclose that having a debit card denied for lack of funds costs the customer nothing; and that the agency will take appropriate enforcement action against deceptive solicitations.

We will continue to urge the Federal Reserve, the Office of the Comptroller of the Currency, and the National Credit Union Administration to follow the FDIC's lead in limiting the number of overdraft fees charged to six per year and addressing manipulative transaction posting. All the federal banking regulators should also take joint action to ensure that overdraft fees are reasonable and proportional to the institutions' cost in covering those transactions.

We thank you again for addressing abusive overdraft lending. If implemented with our recommendations, your guidance could save American families millions in overdraft fees each year. We look forward to continuing to engage with you on this and other efforts to curb irresponsible small-dollar lending.

Sincerely,

AARP

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Americans for Financial Reform (AFR)

Arizonans for Responsible Lending (ARL)

Black Leadership Forum, Inc. (BLF)

BWICA Educational Fund, Inc. (Brooklyn)

Calvert Asset Management Company, Inc. (CAMCO)

CASA de Maryland (CASA)

Center for Responsible Lending (CRL)

Chautauqua Home Rehabilitation and Improvement Corporation (CHRIC)

Colorado Progressive Coalition (CPC)

Consejo de Federación Mexicana (COFEM)

Consumer Action

Consumer Federation of America (CFA)

Consumers Union

CHANGER, Inc.

Cypress Hills Local Development Corporation (Brooklyn) (CHLDC)

District Council 37 Municipal Employees Legal Services (NYC) (MELS)

Empire Justice Center

Fair Housing Council of Central New York

Florida Minority Community Reinvestment Coalition (FMCRC)
Human Development Services of Westchester (HDSW)
Insight Center for Community Economic Development
International Brotherhood of Teamsters (IBT)
Long Island Housing Services, Inc. (LIHS)
Maryland Consumer Rights Coalition (MCRC)
MFY Legal Services, Consumer Rights Project
Minority Business RoundTable (MBRT)
National Association for Latino Community Asset Builders (NALCAB)
National Association for the Advancement of Colored People (NAACP)
National Association of Consumer Advocates (NACA)
National Community Reinvestment Coalition (NCRC)
National Consumer Law Center (on behalf of its low-income clients) (NCLC)
National Council of La Raza (NCLR)
National Fair Housing Alliance (NFHA)
National Latino Farmers & Ranchers Trade Association
Neighborhood Economic Development Advocacy Project (NEDAP)
New York Public Interest Research Group (NYPIRG)
New York StateWide Senior Action Council, Inc. (NYSSAC)
North Carolina Housing Coalition
Pratt Area Community Council (Brooklyn) (PACC)
Public Citizen
Service Employees International Union (SEIU)
The Financial Clinic (NYC)
The Greenlining Institute
The Leadership Conference on Civil and Human Rights (LCCR)
The William C. Velasquez Institute (WCVI)
United Auto Workers, International Union (UAW)
Westchester Residential Opportunities, Inc. (WRO)