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October 19, 2006

Mr. Steve Hanft
Legal Division
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Request for Comment on Proposed Study of Overdraft Protection Programs

Dear Mr. Hanft:

These comments are provided on behalf of NCLC's low income clients.[1] Please accept our apologies for submitting them a few days after the October 16 date for comments.

We appreciate the opportunity to provide comments on the FDIC's proposed study on overdraft protection programs. We must admit at the outset that from our vantage point as long time advocates of low income consumers, we do not agree that these programs provide *protection*. Rather, we view these programs as a method of extracting dollars from unsophisticated consumers who may not be aware of the expense and the dangers of permitting these programs to apply to their bank accounts.

Overdraft loans are astronomically expensive; a $100 overdraft with a $20 fee has an APR of 520% if the overdraft lasts 2 weeks. Most banks offering overdraft loans automatically enroll their customers into the programs, without asking for the customer's consent or even adequately telling them about their enrollment. Overdraft loans made through ATM and debit cards are even more abusive, because consumers don't expect to be able to overdraw their accounts through ATM withdrawals and point-of-sale purchases and the rationale that overdraft loans save retailer fees doesn't apply. For a full explanation of the dangers inherent in these products, please see our many reports and comments to other federal agencies.[2]

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[1] The **National Consumer Law Center**, Inc. (NCLC) 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 laws, including Consumer Banking and Payments Law (2nd ed. 2002), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low income people, conducted training for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s, and regularly provide comprehensive comments to the federal agencies on the regulations under these laws.

[2] For more information about the dangers of these programs, please s*ee*, http://www.consumerlaw.org/action_agenda/bounce_loans/index.shtml.

You have received many excellent comments from other consumer advocates regarding specific lines of inquiry recommended for your study relating to the cost, disclosures, the degree of choice involved, marketing and related issues applicable to overdraft programs. We concur and support these recommendations. We suggest adding only one more line of inquiry.

Recipients of Social Security, SSI and Veteran's Benefits may be spending considerable amounts of their federal benefits on fees for overdraft programs. These programs siphon significant portions of federal dollars intended to be spent for the necessaries of life to banks' fees.[3] There is a basic policy question that should be addressed regarding whether it is appropriate for the American taxpayer to be supporting the banking industry in this way.

We suggest that you add to your study the following questions, relating to fees charged for overdraft programs to recipients of federal benefits:

1. The percentage and number of accounts held at the institution that receive direct deposit of federal benefits.
2. The percentage and number of these accounts that have overdraft protection applicable to them.
3. The overdraft transaction fee charged to these federal recipients.
4. The average dollar amount of federal benefits deposited into each account.
5. The average number of uses per year of overdraft protection by these federal recipients.
6. The percentage and number of these accounts that were offered standard overdraft lines of credit, or similar products.

We hope that you pursue this line of inquiry related to the cost of overdraft programs to federal benefit recipients, as the transfer of federal benefits dollars from low and moderate income individuals to the banking institutions should be determined. Whether this transfer pursues our national policy of providing assistance to the neediest of America's workers should also be evaluated. The certainty of the continuing deposit of these funds from the federal government substantially limits the risk of non-payment of overdrafts for these institutions, which should lead to reduced fees.

If you have any questions, or would like to discuss this matter in any way, please contact Margot Saunders NCLC's Washington office, or Chi Chi Wu at NCLC's Boston office. Thank you for your consideration.

Sincerely,

Margot Saunders — Chi Chi Wu

[3] There are pending questions in the courts regarding the legality of these programs applying to recipients of Social Security and SSI (*see, e.g.* Miller v. Bank of America, currently pending in the California Court of Appeals).