

Comments of
National Consumer Law Center
(on behalf of its low income clients)

To

Department of the Treasury, Office of the Comptroller of the Currency (Attn: 1557-0081)
Federal Reserve System (Consolidated Reports of Condition and Income, FFIEC 031 & 041)
Federal Deposit Insurance Corp. (Consolidated Reports of Condition and Income, 3064-0052)

On

Proposed Agency Information Collection Activities
(consumer deposits; bank fees; remittance transfers)

78 Fed. Reg. 12141 (Feb. 21, 2013)

Submitted May 6, 2013

On behalf of our low income clients, the National Consumer Law Center¹ supports the proposed data collection. In particular, we support the proposal to collect data on consumer deposit account balances; on service, overdraft and ATM fees; and on remittance transfers. This data is essential to the ability of bank regulators to conduct their consumer protection and safety and soundness activities.

We agree that data on fees should be collected regardless of the size of the institution. Overdependence on problematic fees is especially troubling and dangerous for smaller institutions.

We also ask for one addition to the proposed data collection: data on erroneous remittance transfers that do not reach their source, for which the consumer is required to bear the loss.

Data on Consumer Deposit Account Balances

A number of events in the last few years have had an impact on consumers' access to the financial system. The economic downturn, regulation of interchange fees, and the advent of the prepaid card market have elicited a number of responses by the financial industry and by consumers.

Yet there is little solid data on consumer deposit accounts and the balances in those accounts. Information on account balances can help to determine if lower balance consumers are being driven out

¹ Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC publishes a series of consumer law treatises, including Consumer Banking and Payments Law. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. These comments were written by Lauren Saunders, Managing Attorney of NCLC's Washington, DC office.

of the banking system. The data is also important to understanding how financial institutions are serving consumers, how consumers are able to access deposit accounts, and how consumers use deposit accounts as transactional, savings and investment vehicles. This information is important to the ability of regulators to fulfill both their consumer protection and safety and soundness roles.

Consumer Deposit Service Charges

Fees are often a sore spot for consumers. Some fees are merely the price of a product or of an optional service, and are not necessarily problematic as long as the fees are clearly and conspicuously disclosed and are simple enough to understand. But fees can also be a backhanded way of obscuring the price of a product and tricking consumers into paying much more than they understood or desired. Bank regulators can look out for problematic fee practices only if they have information about the fees that consumers are incurring.

The proposed data collection identifies the three important categories of service charges on which more information is needed: overdraft-related servicing charges, monthly maintenance charges, and automated teller machine (ATM) charges. We agree that data on all three categories is important to both consumer protection and safety and soundness.

Overdraft Fees

Overdraft fee practices by many banks have become increasingly abusive over the last couple of decades. Overdrafts should never have become a predatory form of credit. Fee-based overdraft programs should only be used as an occasional courtesy to cover a mistake on an important payment, and not as a subversive way of tricking consumers into credit at the equivalent of triple- or even quadruple-digit APRs. While the 2010 Regulation E changes may have had some beneficial effect, responses by institutions have varied widely, and bank regulators simply must understand the extent to which banks are collecting significant overdraft fees from their consumer customers.

We are especially concerned about the impact of overdraft fees on recipients of Social Security and other federal benefit, who now must receive their benefits electronically through direct deposit into a bank account or on to a prepaid card. Overdraft fees reduce federal payments that are intended to alleviate poverty and pay for necessities for seniors, individuals with disabilities, and veterans. More data on overdraft fees in general, as well as the fees deducted from federal benefits, would help regulators address abusive practices.

Monthly Maintenance Fees

Information on monthly maintenance charges is also important. There is nothing inherently wrong with a monthly bank account fee. Problems arise when the fee is either too high or too low. The squeeze on interchange fees and, to a lesser extent, overdraft fees has led many banks to increase their

monthly charges or make those charges harder to avoid. For some consumers, higher fees may be driving them out of the banking system.

But on the other end of the spectrum, both banks and consumers have become overly reliant on the often false or unequal promise of “free checking.” Checking accounts cost money, and they provide a service that consumers should be willing to pay for. But the competition to offer “free checking” and the allure of that promise has led to a situation where banks must recoup their costs in less transparent and more abusive back end fees. Back end fees also fall disproportionately on a small number of consumers, with the consumers who can least afford high fees subsidizing free checking for many others.

Understanding the maintenance fees that banks are charging consumers can help regulators assess whether the institution is engaged in the proper balance of fees that cover their costs and pricing practices that are not overly reliant on penalty fees. Regulators can also do their job better if they are able to identify successful strategies to cover the costs of accounts without either limiting access to those accounts or relying on back end fees.

ATM Fees

Finally, information on ATM fees is also important. ATMs are increasingly important to consumers’ access to the banking system. But that access can come at a cost. That cost is especially difficult to bear for lower income consumers, including those reliant on public benefits, who often need to pay to access their scarce funds. The growth of the prepaid card market, with its different ATM pricing model, also has varying impacts on consumers’ ability to access their funds. Information on the ATM fees that consumers are paying will help bank regulators play their role in supervising the banking system and ensuring that it works for consumers and banks alike.

Importance of Data for Safety and Soundness and Consumer Protection, Including for Smaller Institutions

Information about the fees that consumers are paying is important not only to consumer protection but also to reviewing the safety and soundness of a financial institution. Overdependence on one form of income can jeopardize the safety of a bank. This is especially true if the fees are problematic from a consumer protection point of view and may be the target of regulatory activity.

Addressing overdependence on problematic fees ensures both safety and soundness and consumer protection. Regulators should not be forced to choose between correcting consumer protection abuses and preserving income that a bank depends on. The data requested will enable bank regulators to identify and address overdependence on problematic fees.

The fact that banks make their fee schedules available to consumers and disclose their service charges does not change the fact that aggregate data is essential. For example, two banks can have

identical overdraft fees, but one may engage in a number of complicated and subtle practices that push consumers into incurring overdraft fees, and the other may work to minimize overdraft fees and to help consumers find safer and less costly ways of covering shortfalls. Discrepancies in the amount of different categories of fees charged at different banks can help regulators identify problematic practices.

Information about fee practices is even more critical in the regulation of smaller institutions. Many smaller banks are closer to the consumers they serve and less likely to engage in abusive practices than larger banks. But smaller banks can also be much more dependent on fee income and can get swept up in the desire to maximize those fees even when the fees harm consumers. Indeed, smaller banks, with the encouragement of third-party vendors, were some of the first to adopt aggressive automated overdraft programs and actively promote the ability of consumers to overdraw their accounts.

Regulation of those fees can then have a more serious impact on the safety and soundness of a smaller institution. Regulators simply must identify overdependence on problematic fees by small banks in order to preserve the banks' safety and soundness.

Remittance Transfers

We support the proposal to collect information on the types of international remittance transfers offered, the settlement systems used to process them, and whether the number exceeds or is expected to exceed the 100 safe harbor threshold, and new data items required for institutions not qualifying for the safe harbor. The Dodd-Frank remittance provisions add important new protections for consumers sending money abroad. In order to supervise implementation of those provisions, regulators must know whether an institution is or is not subject to them.

We agree that regulators should collect information on the scope of the remittance market. We believe that the fears that improved protections will lead to fewer options for consumers are overstated. To the extent that a remitter is unable to ensure the safety of the funds being sent, or to disclose the price in a uniform, transparent manner, then perhaps consumers are better off going elsewhere. But the debate about the impact of the regulations, and the availability of options for consumers, is moot without the data to evaluate it.

Information on the settlement systems being used is also important to ensuring the security of funds remitted internationally. Some systems are well regulated and others less so. Bank regulators need to understand how funds are being sent abroad and what systems are in place to ensure that the money reaches its intended recipient.

Finally, we ask that one additional more item be added to the data collection relating to remittances: information on the number of erroneous remittances that do not reach their intended target. The final remittance rules require the consumer to bear the loss if the consumer makes an error in providing the account number. Institutions claimed that they would not be able to stay in the

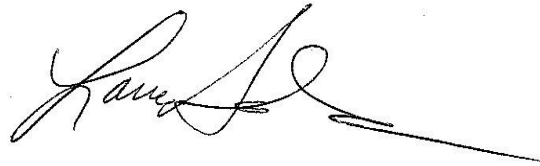
remittance business without this exception. But we believe that sophisticated financial institutions are in the best position to develop systems to ensure that the money reaches its target – even if the consumer provides a mistaken account number – and to bear the loss if there is a mistake. The loss of a single remittance can be devastating to an individual.

While institutions have an obligation to attempt to correct any remittance error, we do not know either how often errors occur or how often they are not corrected and the consumer must bear the loss. This information is critical to reviewing whether the remittance system is working for consumers and whether additional protections are needed to protect consumers in this electronic age.

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Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Saunders", with a long horizontal flourish extending to the right.

Lauren Saunders
Managing Attorney, Washington Office
National Consumer Law Center