

1 August 2004

Jennifer J. Johnson
Secretary, Board of Governors
Of the Federal reserve system (12 CFR Part 230; Docket No. R-1197)
(Docket No. OP – 1198)

and

Office of Comptroller of the Currency (Docket No. 04-14)
Federal Deposit Insurance Corporation
Office of Thrift Supervision (No. 2004-30)
National Credit Union Administration

RE: Proposed Rule – Regulation DD

And Overdraft Protection Guidance

On behalf of Consumer Action, a statewide consumer education and advocacy organization serving the California consumer since 1971, we are writing to express our opposition to the Federal Reserve Board's proposal to regulate bounce loans, or so-called "bounce protection", under the Truth in Savings Act (TISA). Bounce loans should be regulated under the Truth in Lending Act (TILA). The Board and other federal banking regulators should also take steps beyond the proposed guidance to halt the other abuses of bounce loans, most particularly bank advertisements for bounce loans that encourage customers to use overdrafts as a credit source.

We cannot understand how the Board (along with all of the federal banking regulators) can explicitly admit that bounce loans are credit, then fail to regulate them under the key federal law governing credit disclosures. Bounce loans are an extraordinarily expensive credit product. For example, a \$100 overdraft will incur at least a \$20 fee. If the consumer pays the overdraft back in 30 days, the APR is 243%. If the consumer pays the overdraft to bank in 14 days, which is probably more typical for a wage earner, the APR is 520%.

It is because of the expensive cost of bounce loans that consumers need to have Annual Percentage Rate (APR) disclosures. Without them, consumers have no way to compare the cost of bounce loans and other similar transactions, such as payday loans, pawnbroker loans, auto title loans, overdraft lines of credit, and credit card cash advances. Of all the high rate lenders, it is ironic that banks offering the most expensive form of credit can

avoid the need to disclose the single and most critical piece of credit information. Contrary to the board's suggestion, consumers do find APR disclosures useful, with one study finding over 80% consumer awareness of APRs and 60% finding TILA disclosures helpful. More detailed comments submitted by the National Consumer Law Center and others, which we endorse, contain suggestions for how to disclose the APR in a meaningful manner.

As for the proposed guidance issued by the federal banking regulators, it does not go far enough in protecting consumers from the harm that bounce loans can create. The banking regulators must implement stronger protections for consumers, and those protections must be legally enforceable by both regulators and the consumers who are harmed by bounce loans. There is no private right of action in TISA as there is in TILA.

Stronger protections are necessary to prohibit banks from marketing bounce loans as a credit source, essentially encouraging consumers to write bad checks for their credit needs, and without a firm commitment to cover them. These consumers, often low-income and vulnerable, are likely to use bounce loans repeatedly and become trapped in a cycle of debt. Conversely, banks often do not seek affirmative consumer assent when imposing bounce loans, and consumers are charged these expensive bounce fees without their consent or any prior warning. The banking regulators must mandate that positive consumer opt-in is required for any form of credit, including bounce loans.

Stronger protections are also needed to restrict bounce loans made accessible through automated teller machines (ATMs) and debit card transactions. There is simply no justification for allowing a consumer to overdraw an account for a transaction that is on-line, real time, for which banks can confirm the availability of funds. The bank's purported reasons why bounce loans benefit consumers—saving them from merchant penalties, late charges and embarrassment—are completely inapplicable to ATM and many debit transactions.

Note that we are not opposed to overdraft programs in general. We are only opposed to bounce loans that are exorbitantly expensive, that are not accompanied by APR disclosures, that are imposed without affirmative consumer consent, or that are advertised to consumers as an easy source of credit.

Without TILA coverage and stronger consumer protections, bounce loans will ultimately undermine years of efforts to bring unbanked consumers into the financial mainstream.

Previously, consumer advocates and Treasury had agreed that bank accounts are safer and cheaper than going to check cashers or keeping large amounts of cash at home. Given the risk of incurring multiple overdrafts through unfair bounce loan products, we can no longer make that claim with as much certainty---going to a check casher might just be cheaper and safer than risking expensive bounce loan fees. Ultimately, the irresponsible actions of banks in offering bounce loans may lead to even more unbanked consumers.

Comments submitted by: Consumer Action

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