



SHRIVER  
CENTER

Sargent Shriver National Center on Poverty Law

March 29, 2009

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th St. and Constitution Ave., NW  
Washington, DC 20551

**Re: Regulation E (R-1343) - Limitations on fee-based automatic overdraft loan programs**

Dear Chairman Bernanke, Members of the Board, and Board Secretary Johnson:

I am writing from the Sargent Shriver National Center on Poverty Law (“Shriver Center”), a Chicago-based non-profit policy development and advocacy organization, to comment on the proposed changes to Regulation E - Electronic Fund Transfers (R-1343), which would limit the ability of financial institutions to assess overdraft fees on certain ATM and debit transactions.

The Shriver Center asks the Board to adopt alternative two – the opt-in approach, which would permit financial institutions to charge overdraft fees only if the consumer affirmatively agrees to enrollment in an overdraft program. Overdraft fees cost consumers \$17.5 billion every year, with a disproportionate impact on low and moderate income individuals. Moreover, studies confirm that most consumers do not understand how overdraft programs work and prefer an opt-in choice for enrollment. An opt-in program would protect consumers more actively than any other approach.

**The Fed should adopt the opt-in approach because automatic enrollment in overdraft programs is unfair and costly to consumers.**

According to an FDIC study released in November 2008, 75% of banks automatically enroll customers in overdraft programs and usually permit customers to opt-out.<sup>1</sup> The FDIC found that the median fee for overdrafts is \$27, which translates to a 3,520% APR for a typical POS/debit overdraft and a \$1,173% APR for a typical ATM overdraft. Furthermore, the FDIC study concluded that low-income consumers were most likely to incur these costly overdraft fees.<sup>2</sup>

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<sup>1</sup> Federal Deposit Insurance Corporation, Executive Summary, FDIC Study of Bank Overdraft Programs (2008), available at [http://www.fdic.gov/bank/analytical/overdraft/FDIC138\\_ExecutiveSummary\\_v508.pdf](http://www.fdic.gov/bank/analytical/overdraft/FDIC138_ExecutiveSummary_v508.pdf).

<sup>2</sup> *Id.*

The current industry practice of automatic enrollment in overdraft programs has failed to ensure protection for consumers. A national poll recently conducted by the Consumer Reports National Research Center found that 39% of respondents did not think they were enrolled in an automated fee-based overdraft program for debit transactions, and 48% believed they were not enrolled in ATM overdraft programs.<sup>3</sup> Since the vast majority of consumers have accounts at banks with automatic enrollment, the Consumer Reports survey demonstrates that consumers are unknowingly taking high-cost, overdraft loans.

Under the current automatic enrollment system, many consumers only realize that they are enrolled in overdraft coverage *after* they overdraft their accounts and incur fees. By establishing a rule that requires financial institutions to obtain affirmative consent from consumers, consumers will be able to understand the potential costs and benefits of overdraft coverage.

The Board has expressed concern that an opt-in approach may be unfair to consumers who prefer occasional overdraft coverage. We believe, however, that an opt-in rule will not unduly burden these consumers since it still allows them to easily enroll in an overdraft program. Additionally, the opt-in rule will provide an incentive for these consumers to evaluate and compare the price of overdraft coverage to other forms of short-term lending, such as linked savings accounts and credit cards. Finally, the number of consumers who want automatic overdraft coverage is relatively small. According to a recent study conducted by the Center for Responsible Lending and Macro International, Inc., two-thirds of consumers prefer opt-in overdraft coverage rather than automatic enrollment.<sup>4</sup>

**The opt-in rule should apply to new and existing customers, and financial institutions should provide the opt-in notice before the assessment of overdraft fees.**

We believe the Board should reject the hybrid approach which would require new customers to opt-in to overdraft coverage but require existing customers to opt-out. Existing customers should have the same right of choice and consumer protection to affirmatively enroll in an overdraft program as new customers will. Any sort of hybrid approach would not only undermine the intended goals of an opt-in rule, but also the large majority of consumers would still be exposed to high overdraft fees.

In addition, financial institutions should be required to provide the opt-in notice to existing customers before the assessment of overdraft fees. Although this approach will increase operational costs for banks offering overdraft programs, we believe the additional savings provided to customers will outweigh the costs.

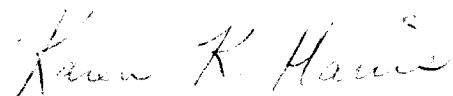
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<sup>3</sup> Consumers Union, Press Release, Consumer Reports Poll: Many Consumers Don't Realize ATM & Debit Transactions Can Trigger Overdrafts; Most Want Opt-In Choice for Costly Overdraft Programs (2009), *available at* [http://www.consumersunion.org/pub/core\\_financial\\_services/009663.html](http://www.consumersunion.org/pub/core_financial_services/009663.html)

<sup>4</sup> Center for Responsible Lending, CRL Research Brief, Overdraft Fees and Opting In: A Survey of Consumer Preferences (2009), *available at* <http://www.responsiblelending.org/pdfs/consumer-preference-opt-in.pdf>.

The Shriver Center appreciates the opportunity to comment on the proposed amendments to Regulation E and urges the both the adoption of the opt-in approach and requiring such approach be offered to all consumers.

Sincerely,

A handwritten signature in cursive script that reads "Karen K. Harris".

Karen Harris  
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