By Fax (202-874-4950) and First Class Mail

October 13, 2010

The Honorable John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219-001

Dear Acting Comptroller Walsh:

As banks continue their campaigns to persuade consumers to agree to pay steep fees for debit card overdrafts, we urge the Office of Comptroller of the Currency to adopt stricter guidance that effectively requires banks to use fair overdraft practices and fully inform consumers. In the past several months, our organizations filed comments in dockets opened by the Office of Thrift Supervision (OTS)[1] and the FDIC[2] to update and strengthen their guidelines for overdraft programs. We urge the OCC to also revisit overdraft abuses that remain and to update the standards you apply to banks.

In late June, the Consumer Federation of America released a survey of the fifteen largest banks' overdraft fees, limits, and total costs per day of overdrafts (Attachment A). CFA documented that fees charged bear no relationship to the amount overdrawn, that bank limits on the number of fees charged per day fail to provide real protection against fee gouging, and that nine of the fifteen largest banks continue to charge two or more fees for a single overdraft. Most of the largest banks are soliciting their customers to pay for overdrawn debit card transactions that could easily be denied at no charge to their customers. Notably, however, one large bank—Citibank—has never charged overdraft fees on debit card transactions, and the largest issuer of debit cards, Bank of America, stopped those fees this summer.

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[1] Comments on OTS Supplemental Guidance on Overdraft Protection Programs, OTS 2010-0008 (June 2010), *available at* http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/OTS-overdraft-guidance-comment-June-2010.pdf.

[2] Comments on FDIC's Proposed Overdraft Payment Supervisory Guidance, FIL-47-2010 (Sept. 2010), *available at* FDIC at http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/Overdraft-Comment-FDIC-Guidance-Sept-27-2010-FINAL.pdf.

We are monitoring overdraft opt-in messages and forms used by the largest banks as well as examples provided to us by our members. Several banks' claims and products are cause for concern, which we detail below. Across the board, failure by the Federal Reserve to regulate overdraft programs under the Truth In Lending Act and to provide cost information in tabular format means that consumers are being asked to make an uninformed decision to use banks' most expensive form of credit.

In this letter, we urge the Office of Comptroller of the Currency to update your guidance to banks on overdraft programs consistent with our recommendations to the OTS and the FDIC. We especially urge that you address transaction posting order immediately, particularly in light of recent judicial and regulatory actions. We also provide examples of troubling products and messages from opt-in marketing currently used by the largest national banks and request corrective action from the OCC.

I. Accountholders Should Receive the Lowest-Cost Overdraft Credit for Which They Qualify.

The OCC and other federal banking regulators have long acknowledged that "[w]hen overdrafts are paid, credit is extended,"[3] even as the Federal Reserve continues to fail to regulate overdrafts under the Truth in Lending Act. Fee-based overdrafts are clearly credit now more than ever: To encourage account holders to opt in, banks are promoting these programs as an emergency source of funds, and in many cases account holders are choosing to opt in with an expectation that they will be "covered."[4] Overdraft programs, then, are clearly being marketed as short-term loans—i.e., credit.

Customers should not be steered into higher-cost credit than that for which they qualify. The Dodd-Frank regulatory reform bill prohibits creditors from offering financial incentives for originators to steer borrowers into more expensive mortgage loans than they qualify for.[5] The Federal Reserve's recently finalized mortgage rules do the same.[6] Steering in the context of other forms of credit is no more appropriate than it is in the mortgage context.

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[3] Department of the Treasury-Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Joint Guidance on Overdraft Protection Programs, 70 Fed. Reg. 9127, 9129 (Feb. 24, 2005) [hereinafter 2005 Joint Guidance].

[4] For example, TD Bank calls its overdraft coverage the "TD Debit Card Advance." Claims for its $35 overdraft program read just like the solicitations for a credit product. "This safety net enables you to make a debit card purchase or ATM withdrawal, even when you do not have enough money available in your checking account." The bank's website presents examples of "coverage when you need it most," including Molly who needs to buy asthma medicine, Mike and Karen who get in trouble with a joint account, Lisa who needs to buy groceries, and Mike who wants cash to go on a date. www.tdbank.com/TDadvance/index.html, (last visited Sept. 26, 2010).

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203. Section 1403 prohibits a mortgage originator from receiving, "directly or indirectly, compensation that varies based on the terms of the loan, other than the amount of the principal." It also prohibits originators from steering borrowers from a qualified mortgage (one with generally less risky terms) to a non-qualified mortgage (one with generally riskier terms); to a loan that the consumer lacks a reasonable ability to repay; and to a loan that has "predatory characteristics (such as equity stripping, excessive fees or abusive terms)."

[6] 75 Fed. Reg. 58509, Federal Reserve Board Final Rule, Regulation Z (Sept. 24, 2010), 12 CFR 226.36(e)(1): " In connection with a consumer credit transaction secured by a dwelling, a loan originator shall not direct or 'steer' a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest."

Banks typically carry a far lower-cost option—an overdraft line of credit—and many also offer transfers from credit cards, which are also typically less expensive. The OCC should require the following: Any account holder who indicates a desire for overdraft coverage must be evaluated by the bank using whatever requirements the bank uses to determine who qualifies for an overdraft line of credit, a link to a credit card, or any other lower-cost overdraft option the bank offers. Only account holders who do not qualify for a lower-cost option should be enrolled in fee-based overdraft.

II. Overdraft Fees Should be Reasonable and Proportional in Amount and Frequency.

A. Amount

As the CFA survey demonstrates, the largest banks' overdraft fees bear no relationship to the amount of credit extended or the cost to the institution for paying overdrafts. While the FDIC found that the average debit card point-of-sale overdraft is just $20, the largest banks charge up to $37 per item.

The typical big bank overdraft fee is $35, while banks that set a trigger on the size of overdrafts that trigger a fee will charge if total overdrafts in one day exceed just $1 to $10. Citizens Bank charges its $37 fee if a transaction of one dollar or more overdraws the account. At the lowest fee, US Bank charges $10 for an overdraft of $20 or less. It should be an unfair trade practice for national banks to charge such steep fees for small overdrafts.

Under current fee structures at the largest banks, a two-week $100 overdraft costs over 900 percent APR if computed as a closed-end loan. Since an overdraft fee is in fact a fee for access to credit, *banks should not charge more for fee-based overdrafts than they do for overdraft lines of credit* – typically 18 percent APR. *At a minimum*, the OCC should use the Credit CARD Act treatment of over-the-limit fees on credit cards as an example of how bank overdraft fees could be set and applied. In its rulemaking under the CARD Act, the Federal Reserve generally considered delinquency resolution costs to be the only permissible factor in setting credit card penalty fees. Since banks repay themselves from the customer's subsequent deposit, such costs are extremely minimal in the overdraft context.

B. Frequency

Nine of the largest banks charge sustained overdraft fees if the overdraft and fee are not repaid in as little as three days. The total cost of a single $10 overdraft repaid in ten days is $93 at Fifth Third Bank, $78 at PNC, and $72 at SunTrust. The limits on the number of fees charged per day provide no meaningful restraints. Chase Bank charges $34 if a customer overdraws by just $5. HSBC, PNC, TD Bank and Wells Fargo set no minimum overdraft to trigger fees. Almost all the largest banks now have a daily maximum limit on the number of fees to charge, but this provides little protection.

The OCC's recent overdraft $33 million enforcement action involving Woodforest National Bank illustrates the harm to consumers caused by unlimited frequency of overdraft fees. The Bank set no limits on the amount of fees a consumer could incur. The Bank charged a second sustained overdraft fee when consumers had not repaid overdrafts within seven days. In its consent order to Woodforest National Bank, the OCC noted that sustained overdraft fees, or "continuous overdraft fee(s)," are unfair because “once continuous overdraft fees began, many Bank customers were unable to avoid the assessment of continuous overdraft fees.”[7]

Woodforest National Bank was not alone in assessing these types of continuous overdraft fees or failing to monitor excessive use. As noted above, even those institutions who have limits or purport to monitor excessive use still allow overdraft fees of hundreds of dollars *per day*. The FDIC’s recent proposed guidance recognizes that charging more than six overdraft fees *within a twelve-month period* constitutes excessive use. We urged the agency to explicitly limit overdraft fees to six within one year, and we urge the OCC to do the same.

(It is worth noting that banks have even begun to create new products to enable consumers to *perhaps* avoid the steep overdraft fees they set. Citizens Bank charges $37 per item after the first day in a year when an account is overdrawn and charges up to seven fees in a single day. If the overdraft is not repaid in three days, Citizens charges $6.99 per day on the fourth through thirteenth day of overdrawn status. In a classic example of creating your own demand, Citizens also markets “Buffer Zone,” for a monthly $4.99 fee to avoid fees on overdrafts that total only $30 during the month. Given that the average debit card purchase overdraft is $20, this “protection” is easily exceeded, resulting in users still being charged overdraft fees. And, consumers opting into Buffer Zone pay the $4.99 month after month even when no transactions overdraw the account.)

III. Posting Transactions in an Order that Maximizes Fees Should Be Prohibited.

All of the largest banks process payments largest first, which significantly increases fees for low-balance customers. Paying largest transactions first causes substantial consumer injury, causing multiple fees when a single large payment exhausts available funds. The injury is not reasonably avoidable by consumers since accountholders have no control over the order in which institutions clear transactions. And the injury is not outweighed by countervailing benefits to consumers or competition. Banks with fee-based overdraft programs pay the bulk of all transactions, so arguing that consumers benefit from high-to-low processing order is disingenuous. Banks make vague disclosures about processing order and do not compete on the basis of paying the most transactions possible from available funds. Processing transactions in order from high to low is a revenue enhancer, not a consumer service.

Beyond clearing transactions from high to low, banks can further maximize fees through the order in which they clear different transaction types (debit card, ACH, checks, etc.). A federal court recently found in *Gutierrez v. Wells Fargo* that the bank had changed its procedure to process all withdrawals together, rather than paying all (typically smaller) debit card transactions before all (typically larger) checks, to maximize fees.[8]

The court in that case ordered Wells Fargo to pay over $200 million to its California customers alone in reimbursement for fees caused *solely* by transaction reordering. The court noted, “the only motives

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[7] Comptroller of the Currency, Consent Order In the Matter of Woodforest National Bank, AA-EC-10-93, #2010-202, October 6,2010, page 2.

[8] *Gutierrez v. Wells Fargo Bank, N.A.*, IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, No. C 07-05923 (August 10, 2010), WL 3155934 (N.D.Cal.), [hereinafter *Gutierrez v. Wells Fargo Bank, N.A.*].

behind the challenged practices [high to low processing and authorizing debit card overdrafts] were gouging and profiteering"[9] and high to low processing is "a trap - a trap that would escalate a single overdraft into as many as ten through the gimmick of processing in descending order. It then exploited that trap with a vengeance, racking up hundreds of millions off the backs of the working poor, students, and others without the luxury of ample account balances."[10]

Manipulation of transaction ordering has long been a concern for regulators. The 2005 Joint Guidance raises the issue but only recommends that banks inform customers that transaction ordering may increase fees.[11] In its own 2005 guidance, the OTS went further, explicitly stating that, as a best practice, transaction-clearing processes should not be manipulated to inflate fees.[12] In its 2009 final Regulation E rule, the Federal Reserve identified transaction posting order as an area that may need additional consumer protections and indicted it would continue to assess it.[13]

The FDIC's recently proposed guidance marks a significant step forward in this area, noting that the agency expects banks to avoid maximizing overdrafts through clearing order and providing two examples of appropriate procedures: clearing items in the order received or by check order.

We urge the OCC to put a stop to this "gouging and profiteering" by national banks immediately by making clear that banks should not—

- process transactions in order from high to low, within a single transaction type or across all transaction types; or
- process debit card and ATM transactions before other transactions in order to maximize overdraft fees for account holders who are not enrolled in fee-based overdraft for debit card and ATM transactions; or
- otherwise post transactions in an order that maximizes fees.

IV. Meaningful Cost Disclosures Should Be Required.

A. Banks are marketing overdraft opt-in as credit.

Our organizations have consistently argued that banks extend credit when they cover overdrafts for a fee and that consumers must have the protections extended by the Truth in Lending Act when using this expensive form of credit. The Federal Reserve has to date declined to require banks to comply with Truth in Lending requirements when extending short-term credit through "courtesy" overdrafts.

Banks marketing overdraft opt-in blur the distinction between a "service" and a "loan." TD Bank calls its overdraft coverage the "TD Debit Card Advance." Claims for its $35 overdraft program read just like the solicitations for a credit product. "This safety net enables you to make a debit card purchase or

[9] Gutierrez v. Wells Fargo Bank, N.A., --- F. Supp.2d ---, 2010 WL 3155934, *31 (N.D. Cal. Aug. 10, 2010)
[10] Id. at *39.
[11] 2005 Joint Guidance, 70 Fed. Reg. 9132; OTS Guidance, 70 Fed. Reg. 8428, 8431 (2005) [hereinafter 2005 OTS Guidance].
[12] 2005 OTS Guidance, 70 Fed. Reg. 8341.
[13] 74 Fed. Reg. 59050: "The Board recognizes that additional consumer protections may be appropriate with respect to overdraft services, for example, rules to address transaction posting order. Therefore, the Board is continuing to assess whether additional regulatory action relating to overdraft services is needed."

ATM withdrawal, even when you do not have enough money available in your checking account." The bank's website presents examples of "coverage when you need it most," including Molly who needs to buy asthma medicine, Mike and Karen who get in trouble with a joint account, Lisa who needs to buy groceries, and Mike who wants cash to go on a date.[14]

Despite marketing fee-based overdraft as a line of credit or cash advance, consumers do not get credit protections. They do not see an APR disclosure to help make a decision and banks are permitted to use set-off to take payment out of the next deposit into the account, both of which would be addressed by Truth in Lending Act coverage. If banks are permitted to market overdraft opt-in as an "advance," overdrafts should be subject to Truth in Lending.

B. Regulations E and DD do not require adequate cost information.

The Model debit overdraft opt-in form issued by the Federal Reserve does not require banks to display the comparable cost of all overdraft options to consumers. While the model form requires that banks list the other overdraft products and services they provide, consumers do not see a standardized form that spells out the cost of all options, including that declining to opt in costs nothing. Consumers must be given information about the comparative cost of each alternative in order to make a truly informed and meaningful choice, including a sample APR disclosure to compare fee-based overdraft loans with a traditional overdraft line of credit or transfer from a credit card. Every opt-in form should prominently display that the cost of not opting in to ATM and one-time debit card overdraft coverage as $0. Consumers should get a clear and prominent message that declining to opt in means *they will never incur any overdraft fees for ATM and single debit card transactions.*

A video on Regions Bank's website describes overdraft opt-in without ever mentioning the fee consumers will have to pay. Fee information is in the fine print at the bottom of the web page and in the bank's FAQs but not in the oral/visual presentation (Attachment B).[15] Most banks claim that it costs nothing to opt in, as long as you never overdraw. For example, the Wells Fargo brochure states "There is no fee to add the Debit Card Overdraft Service to your account and no fee if it is never used."[16] While technically true, the implication is that there is little risk of a high fee for consumers to opt in. Citizens Banks' "A Guide to Standard Overdraft Practices" brochure asks the question "Are there fees?" but only answers with "Standard overdraft fees apply when the bank pays an overdraft on your behalf." The actual fees are only disclosed in the fine print at the end of the text.[17] The Citizens Bank opt-in notice spells out fees, but its three-page web page— What You Should Know About Overdrafts—makes no mention of the overdraft fee and only discloses the sustained overdraft fee (Attachment C).[18] Banks should have to clearly and prominently state the dollar amount of overdraft fees on every document, brochure, or web page that discusses overdrafts.

Banks are not required to tell customers the total cost they could be obligated to pay per day under the banks' fee structure and limits. Opt-in forms typically disclose the various cost elements but do not calculate the total amount consumers could be charged. Consumers opting in to TD Bank's debit card

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[14] www.tdbank.com/TDadvance/index.html, last visited October 1, 2010.
[15] http://www.regions.com/faq/coverage.rf#Q01, last visited October 1, 2010 (Attachment 2).
[16] Wells Fargo brochure, "Balancing Your Life and Your Money," received from customer May 21, 2010, on file with CFA.
[17] Citizens Bank, "A Guide to Standard Overdraft Practices," brochure, on file with CFA.
[18] http://www.citizensbank.com/moneyhelp/budgeting/what-you-should-know-about-overdrafts.aspx, last visited October 1, 2010 (Attachment C).

overdrafts are being subjected to as much as $210 in fees, while Fifth Third Bank's customers are being subjected to as much as $370 in fees, in one day. A BB&T customer is being subjected to $140 in fees if overdrawn by as little as $5.01 in one day. But that information is not presented to consumers in a clear format.

All of the largest banks continue to cover overdrafts triggered by checks, preauthorized payments, and recurring debits for a fee without affirmative consent from consumers. While Reg E only requires opt-in for single debit purchase and ATM overdrafts, most of the largest banks have not gone beyond the letter of the rules to give their accountholders control over payment of all overdrafts. The OCC should use its authority to require national banks to get customers' affirmative consent to pay overdraft fees for all types of transactions. It should be an unfair trade practice for a bank to unilaterally decide to cover overdrafts for a fee.

V. Pressuring Consumers or Seeking Their Consent More Than Once Should Be Prohibited.

During the past few months, it appears that a number of banks have been pressuring consumers or asking them repeatedly to opt in to overdraft coverage. In one instance, this badgering occurred even after the consumer affirmatively declined to opt in. This consumer, who is an attorney, described how Chase repeatedly badgered him to opt in:

> "no idea if these will be helpful, but the first two pages of the first attached file [Attachment D] are what i have received in the mail from Chase many, many times, in addition to online solicitations when i log into my account. finally yesterday i went into the bank and told them i wanted the mailings to stop. they were surprised i didnt want the protection. mentioned that i might be embarrassed if my card is declined, etc. the third page is what they gave me at the bank when i signed the document stating that i do not want the protection.
>
> the second file [Attachment E] is what chase offers online re overdraft protection.
>
> the requirement is you opt in, but apparently there is no prohibition on hounding people who have not affirmatively opted out."

Email from Craig M. Shapiro, Horwitz, Horwitz & Associates, Ltd to Jean Ann Fox, July 21, 2010.

Furthermore, this repeated badgering occurred after the consumer had already affirmatively informed Chase that he wanted to opt out, as the attorney clarified in a second email:

> "also, the first time i logged into my account and was offered the overdraft protection, i clicked on something stating that i did not want the protection. according to the guy at chase yesterday, the solicitations should have stopped after that. he also said that after noting it in my account yesterday, the solicitations should stop immediately. i continue to get them every time i log into my account. i anticipate getting more mailings, and will let you know if they continue to pressure me into signing up. thankfully im not the average consumer....

Email from Craig M. Shapiro, Horwitz, Horwitz & Associates, Ltd to Jean Ann Fox, July 21, 2010.

In March of this year, the undersigned groups sent the OCC a letter documenting the deceptiveness of Chase's overdraft solicitations. However, this repeated badgering of customers to sign up is in addition to those practices. A news report from this summer noted that Chase has stationed employees near its ATMs in order to urge customers to opt in.[19]

Chase is not the only bank repeatedly badgering consumers to opt in. U.S. Bank, in its own email solicitations, mentions that it has sent more than one message asking for opt in. (Attachment F).

In another example, TD Bank would not permit the consumer -- a law school intern at one of the undersigned groups -- to open an account unless she decided whether to opt in or opt out, even after she indicated she wanted to make the decision later. The intern described the following:

> Mr. Belmarsh [TD Bank Store Manager] then asked me whether I was going to "opt-in" or "opt-out" of the Debit Card Advance program. I said I was not sure yet, and then asked Mr. Belmarsh if I could make a decision later. I stated that I wanted some time to think about which choice I would make. He told me that I must either "opt-in" or "opt-out" now, in order to open the account. Mr. Belmarsh was firm in his assertion that I had to make the decision right then. I was under the impression that his software would not allow him to proceed with opening my account unless he clicked on either an "opt-in" or "opt-out" field on the computer.
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> *Affidavit of Rachael Rothman, attached as Attachment G.*

The OCC should prohibit the banks that it supervises from repeatedly asking consumers to opt in. The institution should be permitted to only ask the consumer one time if she wants to opt in. If the consumer declines to opt in, or to provide an answer, the institution should be required to assume that the consumer does not wish to opt in and not solicit the consumer again.

There is ample precedent for a rule that permits an institution to seek a consent only once. For example, the IRS regulations governing the privacy of tax returns provide that a tax preparer may seek the consent of a customer to use tax information for marketing purposes only one time. If the customer declines the request, the tax preparer cannot solicit the customer again for the same type of request. 26 C.F.R. § 301.7216-3(b)(3).

Furthermore, this repeated badgering and pressuring of consumers to opt in appears to be designed to counter the "default effect" the Federal Reserve clearly intended to establish when crafting its final rule.[20] By undermining the default effect, institutions undermine the intent and effectiveness of the rule, and such efforts should be expressly prohibited.

VI. Deceptive Opt-In Solicitations Should Be Monitored and Prohibited.

In its recently issued clarification to its Regulation E final rule, the Federal Reserve noted that "under Regulation DD, advertisements may not be misleading or inaccurate" and that "institutions must not

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[19] Laura Northrop, *Chase Now Has Human ATM Greeter Who Helpfully Sells Overdraft Protection*, The Consumerist, July 14, 2010, *available at* http://consumerist.com/2010/07/chase-installs-atm-greeter-who-sells-debit-card-overdraft-protection.html, last visited October 1, 2010.

[20] 74 Fed. Reg. 59038.

market their overdraft services in a manner that constitutes an unfair or deceptive practice" within the meaning of the FTC Act.[21] The OCC's own recent guidance addressing opt-in requirements and related marketing issues also cautions against deceptive marketing.[22] Yet institutions are employing a range of deceptive tactics in their opt-in solicitations that must be addressed.

A. Some solicitations state or strongly imply that a cost will be incurred when a debit card overdraft is denied.

In its Final Regulation E rule issued in November 2009, the Federal Reserve stated that charging insufficient funds fees on denied debit card transactions would raise "significant fairness concerns" under the FTC Act.[23] The OCC's recent guidance also instructed institutions not to suggest that declined debit card transactions would result in fees.[24] Yet some opt-in solicitations state or suggest that a denied debit card transaction will incur a fee.

B. Some solicitations suggest that a debit card or an account will not function correctly if the customer does not opt in.

The OCC's recent marketing guidance specifically instructs institutions not to provide "misleading representations or omissions about . . . the consequences of opting in or failing to opt in for transactions that are affected."[25] A brochure sent to consumers by Comerica Bank in large type proclaims "After August 15th, A New Change To A Federal Regulation Could Limit Your Comerica *Check Card* Usage. Will You Be Affected?"[26] Similarly, a Chase mailer states in a prominent box "How Your Debit Card Works Will Change. Unless We Hear From You."[27]

C. Some solicitations overpromise overdraft coverage.

The Reg E rules provide that it is discretionary on the part of banks to cover any given transaction that would overdraw an account. While the bank opt-in forms typically emphasize that covering overdrafts is discretionary for banks, some marketing presents this product using terms and promises you would expect to see for a credit card, a line of credit, or even for a payday loan.

TD Bank overpromises the reliability of its coverage in its brochure, which states: "Once you're enrolled in TD Debt Card Advance, you'll have peace of mind knowing we've got you covered!"[28] The big print on its website trumpets "We've got you covered," while the smaller print says "…you may be able to make a debit card purchase or ATM withdrawal even when you do not have enough money available in your checking account."[29] The FAQs in TD Bank's brochure skirts the question "If I sign up, will my debit card charges always be approved?" by saying that the bank considers the relationship, account

[21] 75 Fed. Reg. 107.
[22] OCC Bulletin OCC 2010-15, "Overdraft Protection: Opt-In Requirements and Related Marketing Issues," April 12, 2010.
[23] 74 Fed. Reg. 59050.
[24] OCC Bulletin OCC 2010-15, "Overdraft Protection: Opt-In Requirements and Related Marketing Issues," April 12, 2010.
[25] *Id.*
[26] Comerica Bank brochure, 01/10, on file with CFA.
[27] Chase letter to accountholders, on file with CFA.
[28] TD Bank brochure on TD Debt Card Advance, 62-9188(05/10) on file with CFA.
[29] www.tdbank.com/TDadvance/index.html, last visited October 1, 2010.

history and spending patterns in deciding whether to approve or decline a transaction. Only in the fine print on the back of the brochure does TD Bank spell out that payment is at the bank's discretion.

VII. Conclusion

Banks have a huge revenue incentive to enlist their accountholders to opt in to debit card overdraft programs. In addition to the $24 billion collected annually in total overdrafts, banks stand to lose the interchange fees that would have been collected for denied debit purchases. As a result of this financial incentive to "keep your debit card working as usual," and the inadequate Federal Reserve Reg E opt-in rules and model form, the OCC must use its supervisory and enforcement authority, including its UDAP enforcement authority pursuant to the Federal Trade Commission Act, to make sure consumers are protected and can make informed decisions. Please let us know if we can answer questions or provide further information.

Sincerely,

Jean Ann Fox
Consumer Federation of America

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

Rebecca Borne
Center for Responsible Lending

Lauren Z. Bowne
Consumers Union

Linda Sherry
Consumer Action

Ed Mierzwinski
U.S. Public Interest Research Group

Cora Ganzglass
National Association of Consumer Advocates

CC: Ms. Sheila Bair, Federal Deposit Insurance Corporation

Mr. John Bowman, Office of Thrift Supervision

Ms. Debbie Matz, National Credit Union Administration

Mr. Benjamin Bernanke, Federal Reserve Board

Representative Carolyn Maloney

Senator Christopher Dodd