



Banks Target, Mislead Consumers As Overdraft Deadline Nears

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OVERVIEW

- Facing an August 15th deadline, banks and credit unions are scrambling to pressure consumers to opt-in to expensive debit card overdraft coverage.
- Many opt-in campaigns inappropriately target those accountholders who frequently overdraw their accounts and are among the most financially vulnerable.
- Many consumers have received inadequate and potentially deceptive information from which to make their decision about whether to opt-in, as institutions fail to fully disclose that lower-cost options exist—including having debit card transactions simply declined for no fee.

I. Background

In recent years, many financial institutions have offered an increasingly abusive form of overdraft “protection” as an automatic feature of their bank accounts.¹ For a flat fee averaging about \$34 per incident, the bank routinely covers any transaction that overdraws the customer’s account. The leading trigger of these fees is small debit card overdrafts, which average about \$17—meaning the fee charged exceeds the amount of credit actually extended on a nearly 2-to-1 basis.² Consumers can quickly become hundreds of dollars overdrawn, being charged multiple overdraft fees per day and additional fees if accounts are not brought back to a positive balance quickly. Meanwhile, because this debt is automatically repaid within a short amount of time by the consumer’s next incoming deposit, the risk to the bank is relatively low. These fees are often compounded by the common policy among banks of re-ordering transactions from largest to smallest, which usually generates more overdraft incidents than would otherwise occur.³

By 2008, banks and credit unions were collecting nearly \$24 billion in overdraft fees annually, with over 40 percent of that attributed to debit card transactions.⁴ In surveys conducted for CRL in 2008 and 2009, consumers overwhelmingly reported that they would rather their debit card transactions be declined for no fee;⁵ however, few financial institutions offered a way for accountholders to decline this automatic overdraft coverage.

Regulation E: Customer choice on debit card overdraft coverage

The Federal Reserve ruled in November 2009 that overdraft fees cannot be charged on most debit card transactions—including those at an ATM—unless the consumer consents to having this feature on the account by “opting in” to overdraft coverage of debit cards.⁶ The change to Regulation E is effective on July 1, 2010, for new customers opening accounts, and effective August 15, 2010, for existing accountholders.⁷

While the Federal Reserve's rule finally provides consumers with an option for avoiding expensive overdraft charges on debit card transactions, it fails to address the substantive problems with today's overdraft programs. Overdraft fees bear no relationship to the low cost institutions incur, or to the very low risk institutions accept, when they cover an overdraft transaction. Further, financial institutions can assess multiple overdraft fees each day and additional "sustained" overdraft fees if an account remains negative for several days. They then automatically repay themselves the entire loan and the fees from the customer's next deposit. And they continue to reorder transactions from largest to smallest to generate more overdraft incidents—and more fees.⁸

Moreover, institutions still are not required to obtain consumer consent about whether they want overdraft coverage for checks or electronic automated clearinghouse (ACH) payments—and institutions continue to routinely pay these overdrafts in exchange for a high fee.⁹

These abuses are compounded by the fact that regulators have allowed overdraft fees to be treated differently than other extensions of credit. As a result, these fees are not subject to traditional cost of credit disclosures or substantive protections afforded consumers for other forms of credit under the Truth in Lending Act.¹⁰

Bank reaction to Regulation E

Reactions of financial institutions to the new overdraft rule have been widely divergent. Some banks have ended overdraft coverage on debit cards entirely, which we strongly commend. Others have lowered the amount of their overdraft fees on small transactions, while the remainder have kept their policies largely the same.

One survey found that 14 percent of the 2,000 responding banks and credit unions had decided to no longer allow consumers to overdraw their account using a debit card.¹¹ Bank of America—the nation's largest debit card issuer—is among those who have chosen to simply decline debit card transactions.¹² A representative from Bank of America noted that customers demanded this change, asking the bank to serve as a partner in helping them manage their finances by not allowing them to overdraw through a debit card.¹³ With this policy change, Bank of America joins Citibank, USAA, and ING Direct, among others, who have never allowed overdraft fees to be assessed on debit card transactions.

The same survey found that 18 percent of the financial institutions reported lowering their overdraft fees to make these programs more attractive to customers.¹⁴ A survey of community banks found that nearly a quarter planned to reduce their overdraft fees on debit card and ATM transactions by ten percent or more, in an effort to make their debit card overdraft coverage more palatable.¹⁵ U.S. Bank is one example of an institution that has reduced the amount of its overdraft fees on small purchases.¹⁶

II. Marketing Campaigns Promoting “Opting-in” to Expensive Debit Card Overdrafts

With more than \$10 billion in fee income at stake,¹⁷ those financial institutions continuing to cover debit card overdrafts for a fee are now actively marketing this coverage to their customers through mail, email, websites, ATM screens, and telephone calls.

A key issue for financial institutions is not only what share of accountholders they can convince to opt-in, but *which* accountholders. A small share of accountholders pay a large share of the billions of dollars in overdraft fees assessed each year. A study of FDIC-regulated banks found that about a quarter of all bank accounts become overdrawn in a year, but a smaller core group—about 5% of all accountholders—are overdrawn 20 or more times per year, spending over \$1,600 annually in fees.¹⁸ This finding is consistent with CRL research finding that 16 percent of accountholders account for 74 percent of all overdrafts.¹⁹

Therefore, to preserve the bulk of their fee income, financial institutions need only to ensure that heavy overdraft users opt in.

Targeting the vulnerable with an inappropriate product

Given the concentration of overdraft revenue derived from those who overdraw frequently, several industry consultants have urged banks to prioritize the marketing of debit card overdraft coverage to these customers. One consultant even suggests offering a gift or cash offer to customers with four or more overdrafts annually who opt in, noting that this and other strategies will result in “[s]natching bank revenues from the jaws of Regulation E.”²⁰ The figure below includes the statements of four consulting companies offering opt-in marketing strategies to financial institutions:

SAMPLES OF OPT-IN MARKETING STRATEGIES TO FINANCIAL INSTITUTIONS
“...20 to 29% of your members give you 90% of your NSF income. Target those top 29% and get them to opt in ...” “If they are in the top 29% of abusers, call them.” SOURCE: Rowland Consulting ²¹
“Target frequent fliers...focus attention on these customers first.” (Frequent fliers identified by i7Strategies as customers who don’t pay attention to account balances, live paycheck to paycheck, or intentionally overdraw their accounts.) SOURCE: i7Strategies ²²
“Segment and prioritize based on customers overdraft usage history.” SOURCE: Soundbite Communications ²³
“Regulation E offers aggressive bank marketers opportunities to maintain or even increase revenues from their overdraft programs.” “...the customer is offered an incentive that...best entices the customer to respond...a gift or cash offer if they respond...[a]fter all, this is your most profitable fee group.” SOURCE: ACTON Marketing Intelligence ²⁴

Some financial institutions have adopted this targeted marketing approach. A credit union in Iowa, for example, is offering incentive-based pay to employees who can identify accountholders who have overdrawn their accounts when they walk into a branch and then convince them to opt in to debit card overdraft coverage.²⁵

This targeted marketing approach raises concerns on several fronts. First, those with frequently overdrawn accounts are among the most financially vulnerable. A 2006 CRL survey found that accountholders who experience repeated overdrafts are more likely to be lower-income, single, non-white, and rent their homes.²⁶ Charging large fees for typically small debit card transactions erodes these consumers' finances further. In a recent article, FDIC Chair Sheila Bair noted that this form of overdraft coverage is "...not appropriate for consumers who are having trouble managing their finances."²⁷ This is particularly true since institutions offer dramatically lower-cost overdraft programs or could simply decline the transaction for no fee. Ultimately, this practice may drive vulnerable consumers from the banking system, leading to greater numbers of unbanked households.²⁸

Moreover, since research has repeatedly found that overdraft fees have a disparate impact on lower-income consumers and non-white consumers,²⁹ targeting practices such as these raise fair lending concerns under the Equal Credit Opportunity Act (ECOA). In addition, encouraging high levels of unsustainable overdraft debt and an overreliance on unfairly high-cost fees from vulnerable accountholders poses safety and soundness concerns for financial institutions.

Insufficient information

Since the most vulnerable customers are being targeted for debit card overdraft coverage, it is critical that any information they receive is clear and easily understandable and, at the very least, not deceptive.

The Federal Reserve created a model opt-in form to describe debit card overdraft coverage to consumers in hopes that it would help accountholders make an informed decision (the model form is attached as an appendix). Financial institutions are required to ensure that their communications about debit card overdraft coverage largely mirror this form, which includes the following information:

- a description of the bank's overdraft policies and the types of transactions that can trigger overdraft fees;
- the maximum fee that can be incurred per overdraft incident, as well as additional fees if the account remains overdrawn;
- whether the institution limits the number of fees that can be assessed per day; and
- any alternative overdraft programs offered.

There are two important components missing from the model form, and, therefore, from many banks' opt-in messages to consumers: (1) the fact that taking no action, that is, choosing *not* to opt in, will result in debit card transactions being declined at no charge, from either the financial institution or the merchant; and (2) a way for a consumer to readily compare the cost of all

overdraft options before making a decision. Instead, the Federal Reserve’s opt-in form only states the following related to declined debit card transactions and alternative forms of overdraft coverage:

FROM FEDERAL RESERVE MODEL OPT-IN FORM
<p>“If we do not authorize and pay an overdraft, your transaction will be declined.”</p> <p>“We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard practices. To learn more, ask us about these plans.”</p>

A simple way to address the information gap would be to incorporate a table into the opt-in notice that displays the cost of each available overdraft option, as well as the option of having no debit card overdraft coverage at all:

SAMPLE MODEL FORM COST COMPARISON TABLE			
Type of Overdraft Coverage for ATM and Everyday Debit Card Transactions	Charges	Total Cost per Transaction	Sample Effective Annual Percentage Rate Cost (assuming \$100 overdraft for two weeks)³⁰
1. None	\$0	\$0.00	N/A
2. Opt-in to fee-based overdraft coverage	\$34 per transaction	\$34.00	886%
3. Overdraft line of credit	\$5 transfer fee plus 18% interest	\$5.69	148%
4. Transfer from credit card	\$5 transfer fee plus 24% interest	\$5.92	154%
5. Transfer from linked savings account	\$5 transfer fee	\$5.00	N/A

Disclosing that no fee will be assessed if a debit card transaction is declined is especially important because it differs from what would happen if a check were rejected, or “bounced,” due to lack of funds. In the case of a bounced check, both the bank and the merchant may charge a non-sufficient funds, or returned item, fee; it is critical for consumers to know a declined debit card purchase does not trigger any such fee.

Regulators should revise the model form to require meaningful comparative cost information. In the meantime, financial institutions should take the initiative to provide this information to customers through their current communications related to opting in to debit card overdraft coverage.

Regulators should also actively supervise all overdraft marketing related to opting in, including reviewing employees’ scripts and any employee or customer incentive policies tied to opting in, to ensure that these efforts are not deceptive or inappropriately targeted to certain populations. Such supervision is only as effective as the consequences attached to deceptive conduct. Regulators should prohibit any financial institution that has employed deceptive opt-in tactics

from charging debit card overdraft fees; any “opt-ins” that institution has obtained should be deemed invalid.

The Office of the Comptroller of the Currency (OCC) recently issued guidance for its banks, warning them not to make potentially misleading statements in efforts to induce customers to opt in and to carefully consider the risks of targeting this information to customers who have frequently overdrawn their accounts in the past.³¹ While this is a welcome development, the OCC and all regulators must attach real disincentives to employing deceptive opt-in tactics.

Projected opt-in rates

Prior to the Federal Reserve’s new rule addressing consent to debit card overdraft coverage, surveys conducted for CRL and others consistently indicated that consumers would prefer their bank decline their debit card purchase rather than cover it for a fee.³² Data from a variety of surveys suggest that only a minority of consumers have decided to opt in thus far, with the remainder either undecided or planning not to opt in:

OPT-IN SURVEY RESULTS					
Survey Responses	Nielson Poll³³ (March 2010)	Harris Poll³⁴ (April 2010)	ACTON Marketing Poll³⁵ (Early Spring 2010)	Credit.com Poll³⁶ (Apr 30-May 2, 2010)	National Foundation for Credit Counseling Poll³⁷ (July 2010)
Opting In	<u>26%</u> will opt-in	<u>29%</u> likely to opt-in (<u>14%</u> very or extremely likely)	<u>57%</u> do not plan to opt-in (higher likelihood of opt-in among “overdraft users,” <u>63%</u> of whom plan to opt-in)	<u>48%</u> would opt-in	<u>26%</u> will opt-in
Not Opting In	<u>22%</u> will not opt-in	<u>51%</u> unlikely to opt-in (<u>34%</u> not at all likely)		<u>47%</u> would not opt-in	<u>74%</u> will opt-out
Undecided	<u>39%</u> undecided	<u>20%</u> need more information to make a decision			

The 2010 Debit Issuer Survey found that banks expect a 30 percent opt-in rate on average, although the expected opt-in rate varies dramatically by bank. Larger institutions are projecting opt-in rates of 20-40 percent and smaller institutions are anticipating much higher rates.³⁸

With this diversity of survey findings, it is unclear what portion of accountholders will ultimately choose to have their debit card overdrafts covered. It is apparent, however, for reasons noted earlier, that overall opt-in rates will not matter to banks as much as the opt-in rates of those who frequently overdraw their account. Ensuring these accountholders get a fair description of all forms of overdraft—as well as information about not having any coverage for debit card transactions—is critical.

III. Conclusion and Recommendations

Debit card overdraft coverage is a very expensive option for consumers, with fees nearly twice the amount of credit actually extended. Consumers using their debit cards for several transactions throughout the day can incur hundreds of dollars in overdraft fees over a short period of time. Surveys conducted for CRL and others have consistently shown that the vast majority of checking account holders would rather these transactions simply be declined for no fee.

The Federal Reserve has required that banks obtain consent to overdraft coverage of debit card transactions, but it has not addressed the cost or frequency of these fees or other abusive overdraft practices, such as reordering transactions to maximize fees. As a result, institutions have great incentive to employ deceptive tactics to pressure consumers to opt-in.

The following are our recommendations for consumers, financial institutions, and policymakers:

Consumers:

- To protect your account from costly overdraft fees, do not consent or “opt-in” to overdraft coverage on your debit card. Consider lower-cost alternatives to costly overdraft fees, such as a line of credit or linking an account with back-up funds.
- Consider signing up for programs your bank offers to help you monitor your account balance, such as low balance alerts through emails or text messages.

Financial Institutions:

- Follow the lead of Citibank, Bank of America, and others, by simply declining debit card transactions that would otherwise result in an overdraft fee.
- Only cover debit card overdrafts with fair overdraft options, such as an overdraft line of credit and transfers from savings or other accounts.
- Clearly disclose comparative cost information for overdraft options, including that declined debit card transactions result in no fees.

Policymakers and Regulators:

- Address continuing abusive overdraft practices, including the high-cost and frequency of these fees, the automatic repayment of the overdraft loan upon the customer’s next deposit, the re-ordering of transactions to generate more fees, and the lack of consumer consent about whether checks and electronic ACH payments are covered in exchange for a high fee.
- Actively supervise opt-in efforts. Prohibit financial institutions that have engaged in deceptive opt-in campaigns from charging debit card overdraft fees; any “opt-ins” obtained by banks employing deceptive tactics should be deemed invalid.
- Require an easy-to-read disclosure of the comparative costs of opting in to fee-based overdraft coverage, other overdraft alternatives, and declining to opt-in.

APPENDIX: Model Opt-In Form

What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

➤ **What are the standard overdraft practices that come with my account?**

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

➤ **What fees will I be charged if [Institution Name] pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

➤ **What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

 I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: _____

Date: _____

[Account Number]: _____]

About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

For additional information, please visit our website at www.responsiblelending.org.

¹ For example, financial institutions have steadily increased overdraft fees at a rate far outpacing inflation, introduced additional “sustained” overdraft fees, and changed policies to allow account holders to overdraw their accounts through debit card transactions and ATM withdrawals.

² On average, consumers will pay \$1.94 for every \$1 borrowed on a debit card overdraft. See Eric Halperin, Lisa James, & Peter Smith, *Debit Card Danger: Banks offer little warning and few choices as customers pay a high price for debit card overdrafts*, Center for Responsible Lending, (January 25, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-Danger-report.pdf>.

³ For example, if an account holder with a \$100 balance made three purchases for \$5, \$25, and \$85 (in that order), they would have overdrawn their account once and incurred total fees of \$34. If, however, those transactions were re-ordered from largest to smallest, they would overdraw their account twice, incurring \$68 in fees. For more information, see discussion in Eric Halperin & Peter Smith, *Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans*, Center for Responsible Lending, (July 11, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/out-of-balance-report-7-10-final.pdf>.

⁴ Leslie Parrish, *Overdraft Explosion: Bank fees for overdraft increase 35% in two years*, Center for Responsible Lending, (October 6, 2009), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/crl-overdraft-explosion.pdf>.

⁵ See Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending, (April 16, 2008), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf> and *Overdraft Fees and Opting In: A survey of consumer preferences*, Center for Responsible Lending, (March, 2009), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/consumer-preference-opt-in.pdf>.

⁶ 74 Federal Register 59033-59056.

⁷ Ibid.

⁸ See note 3.

⁹ For a more detailed discussion of these practices, and how widespread they are among large, national banks, see *National Bank Regulator Enabled Overdraft Abuses*, Center for Responsible Lending (February 2010), available at <http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/national-bank-regulator-enabled-overdraft-abuses.pdf>. Two bills currently pending in Congress, HR 3904, The Overdraft Protection Act of 2009 and S. 1799, the FAIR Overdraft Coverage Act of 2009, offer policy options to deal with these abuses.

¹⁰ For further discussion, see *Require TILA Disclosures for Overdraft Loans*, Center for Responsible Lending (June 2004), available at http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/Require_TILA_for_Overdraft-pb007.pdf.

¹¹ Press Release, *Mandatory Opt-in Forces Changes in Banking*, Moebs Services, Inc. (March 22, 2010).

¹² For more information on Bank of America's new overdraft policies, see <http://factsaboutfees.bankofamerica.com/manage-banking-fees/overdraft-and-nsf-fees/>.

¹³ Comments of Tracy Grooms, SVP, Checking Products Executive, Bank of America at the Center for Financial Services Innovation Underbanked Financial Services Forum, June 10, 2010.

¹⁴ Press Release, *Mandatory Opt-in Forces Changes in Banking*, Moebs Services, Inc. (March 22, 2010)

¹⁵ “Community Banks to Lower Customer Fees in Response to Regulation E: Institutions Take Proactive Approach, Despite Expected Loss In Revenue,” *Business Wire* (June 16, 2010).

¹⁶ Press Release, *U.S. Bank Sets a New Standard in Overdraft Pricing: Implements Reduced Fees and Emphasizes Consumer Choice*, (May 10, 2010), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=117565&p=irol-newsArticle&ID=1424710&highlight=>.

¹⁷ We estimate that banks and credit unions collect a total of \$23.7 billion in overdraft fees for all transaction types annually, and that debit card transactions are the trigger for these overdrafts 44% of the time. Thus, about \$10.4 billion in fees (\$23.7 billion * 44%) is attributable to debit card transactions at the point of sale or ATM.

¹⁸ *FDIC Study of Bank Overdraft Programs*, Federal Deposit Insurance Corporation, (November, 2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

¹⁹ Leslie Parrish, *Overdraft Explosion: Bank fees for overdraft increase 35% in two years*, Center for Responsible Lending, (October 6, 2009), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/crl-overdraft-explosion.pdf>.

²⁰ See Press Release, *Consumer Overdraft Opt-in Intentions Surveyed in ACTON Study*, ACTON Marketing LLC (February 23, 2010), available at <http://eworldwire.com/pressreleases/211495> and <http://www.actonfs.com/Optin.aspx>.

²¹ See Webinar, *What Are the Best Ways for CUs to Replace Lost Overdraft Fee Income?*

Rory Rowland, Rowland Consulting (Jan. 29, 2010), presentation on file with CRL and Ray Birch, “How to get members to want to opt-in to overdraft programs,” *Credit Union Journal* (May 17, 2010).

²² See David Peterson, *The Art of the Opt-In: Helping Your Consumers Make A Good NSF Choice*, i7strategies (Mar. 4, 2010), presentation on file with CRL.

²³ See advertisement of Soundbite Communications’ Debit Card Overdraft Enrollment Solution at http://www.soundbite.com/gate_form/795/893.

²⁴ See Press Release, *Consumer Overdraft Opt-in Intentions Surveyed in ACTON Study*, ACTON Marketing LLC (February 23, 2010), available at <http://eworldwire.com/pressreleases/211495> and <http://www.actonfs.com/Optin.aspx>.

²⁵ The University of Iowa Community Credit Union reports that this targeting of customers who have overdrawn their account and employee incentives to opt customers in has resulted in an opt-in rate among this segment of 90%. See Ray Birch, “Iowa CU’s Face-to-Face Pitch Boosts Opt-in Fee,” *Credit Union Journal* (May 31, 2010).

²⁶ Lisa James and Peter Smith, *Overdraft Loans: Survey Finds Growing Problem for Consumers*, Center for Responsible Lending (April 24, 2006), available at http://www.responsiblelending.org/overdraft-loans/research-analysis/ip013-Overdraft_Survey-0406.pdf.

²⁷ Sandra Block, “Banks changing how they handle overdrafts; New rule requires them to get permission from customers before they charge a fee,” *USA Today* (June 25, 2010).

²⁸ Virtually all involuntary bank account closures—in which the financial institution closes a consumer’s account—occur because the customer overdrawn their account an excessive number of times. See Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*, Harvard Business School (June 6, 2008).

²⁹ Consumer Federation of America’s (CFA) 2004 survey found that 45% of African Americans had experienced overdrafts, compared to only 28% of consumers overall. In 2006 and 2008, CRL found that only 16% of people who overdraft pay 71% of all overdraft fees, and those individuals are more likely than the general population to be lower income and non-white. Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, CRL Research Brief (Apr. 16, 2008) at <http://www.responsiblelending.org/overdraft-loans/research-analysis/consumers-want-informed-choice-on-overdraft-fees-and-banking-options.html>. CFA conducted another survey in July 2009, finding that African Americans were twice as likely to have experienced overdrafts than consumers overall.

³⁰ Some financial institutions offer cheaper forms of overdraft lines of credit and linked savings accounts, where no transfer fee is charged. Among these alternatives, only overdraft lines of credit and transfers from a credit card are covered under the Truth in Lending Act, and therefore subject to an APR calculation. The APR calculation given for a \$34 overdraft fee is thus for illustrative purposes only. Because a transfer from an account holder’s saving account—unlike the other options—is not an extension of credit made by the bank, we do not include an APR in this case.

³¹ *Opt-In Requirements and Related Marketing Issues*, OCC Bulletin 2010-15 (April 12, 2010), available at <http://www.occ.treas.gov/ftp/bulletin/2010-15.html>.

³² Leslie Parrish, *Overdraft Explosion: Bank fees for overdraft increase 35% in two years*, Center for Responsible Lending, (October 6, 2009), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/crl-overdraft-explosion.pdf>.

³³ Press Release. *One-quarter of Consumers Will Opt into Overdraft Protection*, The Nielsen Company (June 2010).

³⁴ Press Release. *Consumers Skeptical of Overdraft Protection*, Harris Poll (May 2010).

³⁵ Sara Lepro, "Overdrafts' Demise Could Be Overblown in Flux: Card Businesses," *American Banker* (May 17, 2010).

³⁶ Creditcard.com poll conducted by GfK Customer Research North America, April 30-May 2, 2010. Email correspondence with Gerri Detweiler of credit.com on file with CRL.

³⁷ Press Release, *Poll reveals that more than one-quarter of Americans will opt-in to overdraft protection*, National Foundation for Credit Counseling (August 1, 2010) available at

http://www.nfcc.org/newsroom/newsreleases/files10/FLOI_JulyResults10.pdf.

³⁸ The 2010 Debit Issuer Study reported that large banks expect 20-40 percent of consumers to opt-in, while smaller banks and credit unions expect their accountholders to opt-in at far higher rates, perhaps as high as 70% or more. See Press Release. *Debit Card Use Remains Robust in Midst of Economic Downturn*. Pulse (June 14, 2010).