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Alan Greenspan
Chairman of the Federal Reserve Board
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Washington, DC 20551

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Acting Comptroller of the Currency
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Donald E. Powell
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Dear Mr. Greenspan:

We are writing to share the results of recent research and surveys that illustrate why the Federal Reserve's Truth in Savings rules and the Interagency Guidelines for Bank Overdraft programs fail to protect consumers who overdraw their bank accounts. Consumer Federation of America, Center for Responsible Lending, Consumers Union, National Consumer Law Center (on behalf of its low income clients), and US Public Interest Research Group urge you to take further steps to protect bank customers from bank overdraft "bounce" loans and practices that exacerbate the cost and risks to bank consumers who overdraw their accounts.

The Federal Reserve stated that it reserved the right to propose Truth in Lending regulations to apply to bank overdraft loan services if conditions warrant in the future. In adopting the Interagency Guidelines, federal bank regulators, with the notable exception of the Office of Thrift Supervision, noted that banks extend credit when they cover overdrafts. Our organizations believe that the time is now, not in the future, to apply Truth in Lending consumer protections and disclosure requirements when banks deliberately extend credit by routinely covering checks that overdraw accounts and when banks knowingly permit electronic transactions to overdraw consumers' accounts. New research from Consumer Federation of America (CFA) and the Center for Responsible Lending (CRL) reveals the startling extent to which banks have adopted overdraft loan services, and the vast sums this is costing consumers.

1. **Penalty fees for NSF and overdrafts are a huge and growing expense for bank customers**. Consumers are paying at least $10 billion per year or as much as $22.7 billion just for overdraft loans, according to CRL's estimates based on analysts' assumptions and reported checking account service fee revenue. The total cost to consumers of NSF and overdraft fees at all financial institutions in 2003 was $33 billion, according to Mike Moebs of Moebs Services. CFA found that over a fourth of big banks cite overdraft fees as a source of important revenue.

2. **The biggest banks charge the highest fees for NSF and overdraft transactions.** Banks in the CFA survey charged an average of $28.57 for overdrafts and $28.09 for NSF transactions. Big banks on average charge five percent more than banks in Bankrate.com's spring 2005 checking account study which also found that bounced check fees jumped five percent in the last six months. Six big banks in CFA's survey charge more for paying an overdraft than for bouncing a check. Nearly half of the big banks also charge sustained overdraft fees, some as high as $27.50 per incident.

3. **Big banks are making overdraft loans.** CFA's survey of banks holding over half of all consumer deposit accounts found that over 80% of banks are making overdraft loans by permitting consumers to overdraw at the ATM. Almost as many banks permit overdrafts at point of sale and over half permit consumers to overdraw to pay preauthorized debits. "Courtesy overdraft" is not just a small bank issue. Big banks are starting to advertise their willingness to let consumers overdraw at the ATM while charging penalty fees. For example, Bank of America charges $25 when its customers withdraw more than they have on deposit at the ATM.

4. **Banks use debit processing order to maximize revenue from bounced checks**. Thirty-three percent of big banks disclose that they use high to low debit clearing which causes more fees to be levied when the largest check processed causes other transactions to bounce. Another 15% disclose that they generally clear high to low and 24% reserve the right to use any debit clearing order. Banks justify high to low check clearing as serving consumers who want their largest and most important transactions to be paid. Banks that routinely pay overdrafts cannot use that justification. We believe that banks that provide overdraft "bounce" loans while also using processing order to enhance overdrafts are using unfair practices to enhance revenue at the expense of their customers.

5. **Outdated check hold time periods contribute to increased risk of overdraft.** The introduction of Check 21 in 2005, and the increasing conversion of paper

checks to ACH payments both are speeding up the time in which funds leave consumers' accounts. As implementation of Check 21 continues to spread, and as adoption of ACH expands, consumers will increasingly be penalized by the mismatch between this faster velocity of funds leaving their accounts and the unchanged check and cash hold periods permitted by current law and regulation.

Recommendations to Federal Bank Regulators:

The Federal Reserve Board should close the Truth in Lending Reg Z loophole used by banks to make cash advances to consumers without providing TILA protections and comparable cost disclosures to consumers. Besides requiring that overdraft loan costs be disclosed under open-end credit rules, this action would require banks to get consumers' affirmative consent to extend credit.

The Federal Reserve Board should direct banks to examine their check hold policies to ensure that the full check hold time period is not used except in instances where it is in fact required to avoid significant risk of an insufficient funds check; state that it is an unfair trade practice to charge overdraft or bounce protection fees on any check which would not have bounced if a hold period had been completed on a timely deposit or where a deposit was made sufficient to cover the check if funds for that deposit have in fact been received and the reason for the NSF status is that a hold period has not yet expired on the deposited funds. We urge the Federal Reserve to examine cash and check hold periods and reduce them by regulation at the earliest possible time.

The Federal Deposit Insurance Corporation should require financial institutions to separately report checking account fee revenue for insufficient funds and for overdrafts. Because the FDIC does not require banks to separately report checking account overdraft fee revenue, policymakers do not have a firm figure for the size of this growing credit segment.

Bank regulators should bring Federal Trade Commission Act cases against banks that order debit processing to maximize fee revenue while routinely covering overdrafts for their account holders. Bank regulators should also bring deceptive practices cases against banks that claim their "courtesy bounce protection" is discretionary while also advertising, representing or implying that consumers can expect the bank to cover overdrafts or while permitting consumers to overdraw at the ATM, POS or through preauthorized debits. Banks should be prohibited from advertising or promoting unsafe banking practices by consumers.

Consumers are losing control of their bank accounts through the convergence of electronic check processing, implementation of Check 21, bank overdraft practices, and delay in making deposits available to cover withdrawals. Consumer complaints and loss of confidence in banks will only grow if these practices are not corrected. The at-risk bank customers include low-balance accountholders who can least afford penalty overdraft fees. A fraction of bank customers are paying the bulk of NSF and overdraft fees. Unless corrected, we believe that some of these consumers will lose their bank accounts and rejoin the unbanked population.

If you have any questions, please contact Jean Ann Fox at 757-867-7523.

Sincerely,

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Consumer Federation of America

Eric Halperin
Center for Responsible Lending

Gail Hillebrand
Consumers Union

Chi Chi Wu
National Consumer Law Center

Edmund Mierzwinski
US Public Interest Research Group

Enc.: "Overdrawn: Consumers Face Hidden Overdraft Charges From Nation's Largest Banks," Consumer Federation of America

"High Cost & Hidden From View: The $10 Billion Overdraft Loan Market," Center for Responsible Lending