TO:	Federal Deposit Insurance Corporation SafeAccountTemplateComments@fdic.gov
FROM:	Consumer Action, Consumer Federation of America, Consumers Union National Consumer Law Center, US PIRG
RE:	FDIC SAFE ACCOUNT TEMPLATE COMMENTS
DATE:	June 7, 2010

Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center (on behalf of its low income clients), and US PIRG welcome the opportunity to comment on the FDIC's proposed templates for Safe Transaction and Savings Accounts to benefit low and moderate income consumers. Consumers currently in the ranks of the unbanked and under-banked need safe, low-cost accounts to participate in the mainstream financial market.

We concur with the guiding principles used by the FDIC to develop templates for basic transaction and savings accounts: low (or no) fees, transparency, FDIC-insurance, federal consumer protections, simplicity and ease of use, and sustainability for both financial institutions and their customers. To that list, we would add that safe accounts must be actively marketed by financial institutions and use incentive structures that in fact promote the offering and sale of these products. This active marketing is essential to attract customers from the ranks of consumers outside mainstream banking as well as those who are locked out of the system because they are listed in ChexSystems and other account verification systems.

A new study by the Federal Reserve Bank of Kansas City[1] illustrates barriers to be overcome in designing accounts that meet consumers' needs and that benefit users. The study draws from 24 focus groups with low- and moderate-income unbanked and under-banked consumers in four states. Respondents reported negative experiences with banks, namely overdraft fees, unexpected or hidden account fees, practices to increase fees, and difficulty in getting problems resolved. As the report noted:

> "Based on their experiences, many respondents concluded that the costs of overdrafts, the uncertainty of other fees and expenses and the potential for losing funds outweighed the benefits of keeping accounts at banks. Overdrafts, surprise

[1] "A Study of the Unbanked & Underbanked Consumer in the Tenth Federal Reserve District," Federal Reserve Bank of Kansas City, May 2010.

> charges, fees and disputes related to poor recordkeeping led many of the participants to adopt a cash system for budgeting and bill payment."

Transaction and savings account design must avoid these trust-reducing problems in order to be safe to use and attractive to consumers.

COMMENTS ON A TEMPLATE FOR TRANSACTIONAL ACCOUNT FEATURES

The FDIC template for transaction accounts addresses many of the barriers to account ownership.

Identification to Open Account: We agree that banks should have latitude and flexibility (as much as permitted by law and Treasury's Customer Identification Program regulations) when identifying account applicants. Identification forms and account-opening procedures should be designed to maintain the account applicant's dignity and should be sufficient without raising unnecessary barriers to entry into mainstream banking. Where possible we support the use of *matricula consular* (consulate cards) and other alternative forms of ID when opening accounts.

Prohibit Overdrafts and NSF Fees: This is an essential feature of a Safe Transaction Account for LMI consumers. Overdraft fees, and practices used by banks to maximize overdrafts, are a primary reason given in the Federal Reserve study for why consumers distrust banks. The risk and uncertainty that a mistake will trigger a cascade of $35 overdraft or NSF fees makes owning a low-balance account scary for consumers. Safe accounts should only permit consumers to spend the funds available in the account. Transactions on insufficient funds (NSF) should be denied if the account is not linked to a savings account to cover overdrafts. The cost for banks to return a check or deny an electronic payment on insufficient funds is negligible and should not be passed on to these customers[2]. While consumers may incur merchant fees for insufficient funds checks, their bank should not be charging the typical $35 NSF fee for something that costs banks a quarter ($0.25) or less. Banks should not charge for denied debit card purchases or ATM withdrawal attempts. Not only does the prohibition on overdraft and NSF fees keep the cost of owning an account low, this protection also lowers the uncertainty barrier to bank account ownership. Banks should count each day that the bank processes checks toward the check hold period for deposits to provide maximum access to consumers' funds.

Overdraft Protection: As discussed above, overdrafts should generally be prohibited on Safe Transaction Accounts, whether triggered by a check, electronic

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[2] In 1996, the per unit cost for returned items was $0.03 (Wells, Kristen E., "Are Checks Overused?," *Federal Reserve Bank of Minneapolis Quarterly Review*, Vol. 20, No. 4, Fall 1996.) In 2005, the Federal Reserve Financial Services system charged between 13 cents in New York and 25 cents in San Francisco to process a basic return check (Federal Reserve Financial Services, Check Service 2005 Schedules from Federal Reserve Bank of New York (effective January 3, 2005) and San Francisco (revised December 28, 2004)).

payment, debit card transaction or ATM withdrawal. However, consumers should be given other types of options for overdraft protection. Institutions should be encouraged to offer low-limit overdraft lines of credit at a reasonable interest rate for checking accounts**.** Prepaid cards should not include a credit facility since transactions can be denied on insufficient funds. Institutions already effectively tack lines of credit onto bank accounts now, but do so in order to rack up abusive overdraft fees. Depending on their credit history, and their history with the institution, these lines of credit may be appropriate for some Safe Transaction Accountholders. Safe Transaction Accounts should also come with the ability to link to a savings account for overdrafts, with no fee charged for the overdraft. The more good options are available to help consumers living on the edge to manage their accounts, the more comfortable they will be with bank accounts.

<u>Prepaid Cards</u>: We are encouraged and applaud that "(t)hese financial services products would be FDIC-insured products and fully covered under the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and its implementing regulation, Regulation E (12 C.F.R. part 205), and other applicable consumer protection laws, regulations, and guidance." These protections are essential in the development of safe, low-cost banking products for low- and moderate-income consumers. Unfortunately, these protections are not yet guaranteed for a growing alternative banking system based on prepaid reloadable cards that act as bank account substitutes. Any prepaid card offered as part of the Safe Transaction program must come with a full set of federal consumer protections.

<u>Opening Deposits/Monthly Minimum Balances/Fees</u>: A modest opening deposit and nominal monthly minimum balance requirement makes an account more attainable for consumers who live paycheck to paycheck. The low minimum balance requirement must be coupled with a ban on overdrafts from the account in order not to inadvertently set up accountholders to incur steep fees.

<u>Total Withdrawals per Month</u>: Consumers need at least ten paper checks per month to cover bills that cannot easily be paid by cash. Due to the vagaries of when checks deposited actually clear, excess transactions should not be subject to punitive fees as most "no-frills" accounts currently impose. Consumers also need low cost money orders to pay rent when landlords refuse to accept checks. Electronic withdrawals should be unlimited at no fee (debit card transactions and ATM withdrawals in the bank's network). As Safe account users become comfortable with preauthorized payments and electronic bill pay, the need for paper checks will decline but not go away entirely.

<u>Direct Deposit</u>: We agree that direct deposit of pay or benefits into the account should be encouraged but not be a requirement. It is important that there be no charge for direct deposit into the account or onto the prepaid card. Free direct deposit is a necessity if the objective is to ensure that low- to moderate-income consumers will have safe, low-cost transactional accounts. More consumers require no cost direct deposit as a result of the elimination of paper checks and the move toward electronic payments. More government agencies have switched from disbursing benefits on paper checks to requiring that recipients either obtain funds through direct deposit or by issued prepaid

cards. Similarly, more employers have made the decision to eliminate paper checks in favor of direct deposit to existing bank accounts or to payroll cards. We urge that free direct deposit be a requirement for Safe transactional accounts.

Electronic Banking Features: Users of Safe Transaction Accounts should be able to view account transactions and transfer funds between accounts by phone, at the bank's website or by mobile device at no fee. Even a modest $0.50 fee can serve as a disincentive to checking the balance and can trigger checks written on nonsufficient funds and budgeting problems. Free and easy access to information is critical to provide control of funds for consumers who have no margin for error and provide information without personal service by bank personnel. Easy access to transaction information helps consumers spot mistakes, identity theft, or unauthorized transactions in time to report errors to the bank. See Savings Template comments below on automatic transfers from transaction accounts to savings.

Other Methods of Accessing Information: One way to avoid transactions made against insufficient funds, or unauthorized transactions, is to ensure that the consumer has a variety of easy methods of accessing account information. In addition to statements and information online, Safe Transaction Accounts should come with the ability to sign up for free telephone, email, and cell phone alerts when deposits are made or the account has dropped below a specified threshold. This information is available now for users of the Direct Express prepaid card being used for Social Security. Other prepaid cards also come with the option to sign up for a cell phone text message confirming each transaction and providing the remaining balance. Making information easily and automatically available through a variety of sources not only helps consumers to manage their accounts but also can avoid telephone calls to customer services that are more expensive for the institution.

Customer Service: Live customer service should also be available without charge. Though banks do not typically charge for customer service, many prepaid cards do, and those fees could migrate over to bank accounts. Consumers who are not accustomed to bank accounts or to navigating automated voice systems need the ability to ask questions as they learn to manage their accounts. Once they do, the need to call customer service should become rare.

Payments/Check Cashing: Consumers who need immediate access to funds should be able to get checks cashed at their bank instead of being required to deposit checks and wait for the deposit hold period to elapse. The deposit delay in access to funds is a barrier to bank account use and drives consumers to check cashing outlets where they pay a percentage of the face value of checks to get them cashed. The template should provide more specificity on how "competitive market rates" are determined in pricing money orders, check cashing, electronic bill payment, and domestic and international wire transfer or remittances.

Inexpensive money orders are especially essential for low income consumers. Many landlords will not accept checks from their renters. In order to pay the rent, consumers must either pay rent with cash or with money orders. In addition, money orders are a safe way to pay bills without fear of overdrafts. Safe Transaction Accounts should include low-cost money orders (or cashier's checks) to serve this need. Banks traditionally charge much more than the post office for money orders, which is one of the factors keeping people out of the banking system.

Prefunded checks are another method to avoid overdrafts and stay within budget that should be encouraged, both for prepaid cards and for bank accounts. Some prepaid cards now come with special checks that can be activated over the telephone, with the funds to pay the check set aside and guaranteed. The consumer receives a transaction number to be written on the check, which then effectively turns the check into a cashier's check – as good as a money order. Low income consumers need options like this to pay landlords or merchants who do not trust traditional checks and to ensure that check-writing does not lead to a cascade of overdrafts.

Training to Use and Manage Accounts: Programs that educate consumers to safely use and manage their accounts should be required. The Kansas City Federal Reserve study found that consumers who got checking accounts without any training in how to use them were set up for failure. It is not surprising that a person with no family history of using checking accounts might not know basic facts that others take for granted, such as having checks does not mean funds are available to cover them. Safe Transaction Accounts must come with easy to understand instructions at the time accounts are opened and available to customers in easy to read format. Banks should consider offering such materials in multiple languages. We support the proposal that institutions partner with community-based organizations to provide information and training for new customers.

Enforcement of Safe Requirements Will Also Be Important: Our organizations are also concerned that regulated institutions often fail to comply with consumer laws. As the 2008 GAO report *Bank Fees: Federal Banking Regulations Could Better Ensure that Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts* (GAO-08-281 January 31, 2008) described, an unacceptable percentage of banks failed to comply with the modest account opening fee disclosure requirements required by the 1991 Truth In Savings Act. GAO investigators used a methodology previously used by U.S. PIRG, with essentially the same results. Excerpt:

> GAO's visits to 185 branches of 154 depository institutions suggest that, despite the disclosure requirements, consumers may find it difficult to obtain information about checking and savings account fees. GAO staff, posing as customers, were unable to obtain detailed fee information and account terms and conditions at over one-fifth of visited branches and also could not find this information on many institutions' Web sites.

Other Considerations: The template for a Safe Transaction Account did not cover all the issues that should be addressed. Many unbanked consumers cannot get accounts due to negative ratings on ChexSystems and other credit reporting services used by banks. "Second chance" account features should be added to the Safe Account so that consumers who have had negative experiences in the past with an unsafe checking account can qualify for a Safe Account. Financial institutions should increase access to Safe Accounts by looking back no more than two years with respect to adverse ChexSystem-type reports. Consumer information should be provided in languages other than English and bank personnel should be sensitive to the languages and cultures in the local community to make banks a comfortable place to do business.

COMMENTS ON A TEMPLATE FOR A BASIC SAVINGS ACCOUNT

Absent compulsion, a template for a basic savings account is unlikely to be adopted by depository institutions, let alone promoted, unless they are convinced that its benefits exceed costs. The following comment, based largely on three Consumer Federation of America reports, attempts to describe and justify a savings account template that provides net benefits to these institutions while also helping LMI households effectively save. The key characteristic of such an account is automatic regular transfers from checking (or paychecks) to savings.

<u>LMI Household Needs</u>: Savings accounts can help LMI households meet many important financial needs – providing a means of paying for unexpected expenditures, making it easier to save for longer-term goals such as homeownership and education, and reducing checking overdrafts and overdraft loans. Research has revealed significant gaps, for LMI households, between liquid resources available to pay for unexpected expenditures and the expenditures themselves. Households having difficulty affording expenses, such as an unexpected car repair or dental visit, tend to believe they cannot afford to save for longer-term goals. Moreover, those households with savings can more easily avoid the overdraft fees and loans that cost Americans more than $23 billion a year. Yet, according to Survey of Consumer Finances data, only two-fifths of all LMI households (the lowest two income quintiles) have a savings or money market deposit account, and many of these accounts contain deposits of well under $500.

<u>Depository Institution Needs</u>: For the savings needs of these LMI households to be met, depository institutions must not only offer attractive savings accounts, but also effectively market these accounts. For example, even though dozens of institutions participating in local and regional America Saves programs have offered low-balance, low-fee savings accounts, typically their child accounts, few savers opened them because the institutions did not actively promote these accounts.   This lack of promotion largely reflects the belief of institutions that the accounts would not even cover costs let alone earn a profit.

<u>Importance of Automatic Saving</u>: The only type of savings account that has the potential to meet the needs of both LMI households and depository institutions features preauthorized regular transfers – typically monthly or every pay period – from checking (or paycheck) to savings. The experience of numerous programs, including America

Saves and those sponsoring Individual Development Accounts (IDAs), reveals the difficulty LMI households, indeed all households, have remembering to make regular savings deposits. These deposits will usually be made only if households allow the depository institutions (or employer) to automatically make regular transfers. From the perspective of the institutions, these automatic payments significantly lower account maintenance expenses and can generate larger income from deposits. The costs are much lower when deposits are not made through tellers, and the deposits grow most rapidly with automatic transfers. According to depository institutions interviewed by CFA, savings balances must average between $500 and $1000 for these accounts to be profitable. Clearly institutions will be more interested in offering and marketing savings accounts that attract not just small depositors, but also customers making larger deposits.

What specific features of savings accounts best meet the needs of both LMI households and depository institutions?

<u>Federal Deposit Insurance Protection</u>: All savings accounts offered to LMI households should be protected by federal deposit insurance. These households cannot afford to risk what for many of them represents most or all of their savings, in uninsured accounts such as stock mutual funds. Moreover, survey research has consistently revealed that LMI households are reluctant to expose their savings to any risks.

<u>Initial Deposits</u>: If customers agree to regular automatic transfers to savings, they should be permitted to initially deposit as little as $25. Today, several major depository institutions allow initial deposits this low as long as customers commit to regular automatic transfers from checking. Many LMI households, who are committed to saving and are not facing a severe financial crisis, should be able to come up with this $25. However, it might be important to provide the option to sign up for cell phone text alerts, as discussed above, so that consumers can remember when these transfers are being made.

<u>Monthly Minimums to Avoid Fees</u>: As long as monthly deposits are made, regardless of the account balance, there should be no monthly fee. Most of the accounts alluded to in the previous paragraph do not impose this fee. Given extremely low yields paid today by virtually all depository institutions on savings, a fee of even $2 a month represents a serious disincentive for LMI households to begin trying to build emergency savings. On the other hand, a small fee assessed in months when deposits are not made serves as a disincentive for households to suspend automatic payments.

<u>Withdrawals</u>: It serves neither the needs of LMI households nor those of depository institutions if there are frequent withdrawals from savings. We would accept as few as two free withdrawals a month before any fees are assessed as long as these fees are reasonable -- in our view, no more than $2 – and are adequately disclosed, including during ATM withdrawals before fees are charged. Survey research suggests that LMI households incur unexpected expenses at a rate of less than one a month over the course of a year. Checking accounts, according to government research by a large majority of LMI households, should be used to cover regular expenses. Fees assessed on savings

withdrawals, after the first two in a month, serve as a disincentive for customers to treat their savings accounts like their checking accounts.

Savings as Checking Reserve: Depository institutions should offer free transfers of funds from savings to checking if the latter contain insufficient funds. These transfers would tend to reduce the number of overdrafts or insufficient funds transactions and related fees and loans. They also would help assure LMI households that they could "afford" to make the monthly transfers to savings without risking additional checking charges for insufficient funds.

Requirements for Statements: Today for most savings accounts, depository institutions are required to mail monthly statements to customers. We believe that related expenses have discouraged many institutions from offering accounts to small savers. Furthermore, because most LMI customers can access ATMs at their own institution for free, they can learn their current account balance simply by doing so. Accordingly, we propose that these institutions be given the opportunity to apply to an appropriate regulator for permission to mail statements as infrequently as quarterly as long as three conditions are met: these statements remain free; account balances are available for free from ATMs or via toll-free phone number, and ideally by text message too; and the accounts themselves offer the promise of greatly benefiting LMI savers. These benefits must include successful saving by a significant number of account holders. For consumers who have both a checking and a savings account, the institution can also consolidate the statement.

FDIC Questions

Q: What are the expected benefits to consumers using safe, low-cost transactional and basic savings accounts?

A: Consumers who use safe, low cost accounts will have access to the banking system and will benefit from the convenience, safety, and access that banks offer. Their family money will be protected by FDIC insurance and federal laws that protect account holders from unauthorized use. These consumers will also have a safe place to save money and earn some interest on their savings. These accounts can be seen as "training wheels" for entering the banking system and will provide an educational experience as well as a practical one in helping families manage their money.

Q: If check-writing is permitted, should there be a maximum number of checks that can be written each statement cycle? If so, at least how many checks should be allowed to be written each statement cycle?

A: Unbanked and underbanked consumers need control of payments and tangible payment devices. That is one reason why cash is still used to budget and pay bills. While consumers may use preauthorized payments and electronic bill payment, those who have used cash to pay bills may find paper checks and money orders more concrete than electronic forms of payment. Moreover, many LMI households do not have internet access or are not comfortable with electronic banking. Safe Transaction Accounts should include enough checks to enable a family to pay basic bills without having to physically go to each utility office or landlord to pay in person with cash. A minimum of ten checks per month should be sufficient.

Q: What is an appropriate range for "low fees" necessary to offset some of the financial institution's costs associated with offering a transaction account?

A: Fees should be as low as possible, up to no more than $3. The fee should be in line with Treasury's ETA account limits set to protect federal benefit recipients, the cost of Treasury's Direct Express Card, and the maximum fee set by states that mandate a basic banking account.

Q: What constitutes a reasonable range of competitive fees for other financial services (e.g., money orders, check cashing, bill payment, domestic and international wire transfers, and other financial services) offered to customers and noncustomers?

A: Federally insured depository institutions should be able to match if not do better than WalMart and the Post Office on the cost of fee-based financial services. Check cashing costs 1% up to $3 at WalMart. The Post Office sells money orders for 99 cents. Fees for these services should be reasonable and proportional to the cost of providing the service.

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