June 29, 2012

Consumer Financial Protection Bureau
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20006

Email to: *cfpb_overdraft_comments@cfpb.gov*

Re: *Impacts of Overdraft Programs on Consumers,* Docket No. CFPB-2012-007, 77 Fed. Reg. 12031 (Feb. 28, 2013)

The undersigned consumer, civil rights, housing, community, legal services, and advocacy groups submit these comments in response to the Consumer Financial Protection Bureau's request for information about bank overdraft practices. We applaud the Bureau's recognition that overdraft programs have the capacity to inflict serious economic harm, especially on financial institutions' most vulnerable customers.

Fifteen years ago, overdraft programs were low-cost or free courtesy services, transfers from a consumers' other accounts, or low-cost lines of credit. Since then, they have evolved into traps that strip money from consumers' accounts, drive consumers into debt, and push families out of the banking system. They make bank accounts unsafe for vulnerable consumers, lead to account closures, and push families out of the banking system.

High-cost overdraft loan programs charge borrowers up to $38 per overdraft transaction, regardless of amount overdrawn, and regardless of whether the customer has the ability to avoid overdrawing their account. In fact, where debit and ATM transactions are involved, the typical customer would prefer to stop the transaction at no cost rather than incur an overdraft fee, but many banks instead encourage these unnecessary and unwanted overdrafts. Stopping the transaction costs nothing to the consumer because, unlike a returned check NSF fee, the merchant or ATM does not charge a fee to decline a transaction.

When a customer does overdraft and incur a charge, the bank then guarantees itself repayment by taking the overdraft and fees immediately from the customer's next deposit in one balloon repayment. This immediate "setoff" against the deposit account severely limits the consumer's ability to make a measured decision about the order in which to cover his or her debts and other, often essential, expenses. Thus, financial institutions harm other lenders and other businesses by putting themselves first in line and taking away control of funds from their accountholders and leaving their customers financially worse off.

Banks have also purposefully and deceptively caused consumers to overdraft by "reordering" the posting order of daily transactions in order to create negative balances and increase overdraft fees. Banks are still routinely processing transactions in this opportunistic manner.

Effective reform of today's overdraft practices must address several key harmful features of the product. Effective reform cannot be limited to improved disclosures or less deceptive marketing. With overdraft fees as high as they are, banks have too great an incentive to ensure that customers continue to incur overdraft fees. This incentive will prove stronger than the best disclosures if not coupled with substantive protections. Consumers should not be left alone to navigate a thicket of disclosures in order to avoid a harmful financial product. Credit cards and mortgages have substantive protections beyond disclosures. So should overdrafts.

The CFPB should take the following steps:

- Make substantive reforms. Don't focus on disclosures and "opting in." Consumers should not be left alone to protect themselves from unsafe products.
- Put an end to the "$35 cup of coffee" by prohibiting overdraft fees on ATM and point-of-sale transactions. Require that other overdraft fees be reasonable and proportional.
- Don't let consumers dig themselves into a debt trap with frequent overdrafts. Require banks to assess the consumers' ability to repay after six overdrafts.
- Don't allow overdraft fees on prepaid cards. Keep prepaid cards truly *prepaid* – not postpaid.
- If overdrafts are allowed on debit cards, then give them all the protections of credit cards. Credit is credit.
- Stop the deceitful and unfair reordering of transactions. Reordering serves no purpose other than maximizing bank fees, and makes it impossible for consumers to manage their money.

Sincerely,

Americans for Financial Reform
Arizona PIRG
Arkansans Against Abusive Payday Lending
California Reinvestment Coalition
Center for Responsible Lending
Chicago Consumer Coalition
Community Service Society of New York
Consumer Federation of America
Consumer Federation of the SE
Greenlining
Heartland Alliance for Human Needs & Human Rights
Illinois Asset Building Group
Kentucky Coalition for Responsible Lending
The Leadership Conference on Civil and Human Rights
Legal Aid Society of Milwaukee
Maryland CASH Campaign
MASSPIRG
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low income clients
National Fair Housing Alliance
PathWays PA
Policy Matters Ohio
Public Citizen
Sargent Shriver National Center on Poverty Law
Southern Poverty Law Center
Virginia Citizens Consumer Council