

IMEPOD. Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 391.50-
2 ITEM(S) FOR: 44.16
NSF/OD CHARGE: 70.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

BANCORPSOUTH BRANCH - 555 DATE OF NOTICE 07/13/10

ITEM	AMOUNT	ITEM	AMOUNT
0	29.16	0	15.00
			TRINA N SWIFT OR
			TERRY S SWIFT
			Redacted
			POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

MEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 476.57-
1 ITEM(S) FOR: 15.07
SF/OD CHARGE: 35.00

RINA N SWIFT OR
ERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 07/14/10

ITEM	AMOUNT
0	15.07
TRINA N SWIFT OR	
TERRY S SWIFT	
Redacted	
POCAHONTAS AR 72455-9113	

724559113300

UTO IMEPOD 555 AR POCAHONTAS

IMEPOD Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 1.56-
1 ITEM(S) FOR: 4.94
ISF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

MANCORPSOUTH BRANCH - 555 DATE OF NOTICE 07/19/10

ITEM	AMOUNT	
0	4.94	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

MEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 46.56-
1 ITEM(S) FOR: 10.00
ISF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
FOCAHONTAS AR 72455-9113

WANCORPSOUTH BRANCH - 555 DATE OF NOTICE 07/20/10

ITEM	AMOUNT
0	10.00
TRINA N SWIFT OR	
TERRY S SWIFT	
Redacted	
FOCAHONTAS AR 72455-9113	

724559113300

WUTO IMEPOD 555 AR FOCAHONTAS

MEPOD... 0990... Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
HE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
UNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

CCOUNT NUMBER: Redacted 099-0
ALANCE: 122.80-
6 ITEM(S) FOR: 132.96
SF/OD CHARGE: 210.00

RINA N SWIFT OR
ERRY S SWIFT
Redacted
OCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/02/10

ITEM	AMOUNT	ITEM	AMOUNT	ITEM	AMOUNT
0	38.01	0	27.00	0	21.42
0	20.63	0	17.26	0	8.64
			TRINA N SWIFT OR		
			TERRY S SWIFT		
			Redacted		
			POCAHONTAS AR 72455-9113		

724559113300

UTO IMEPOD 555 AR POCAHONTAS

MEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 355.30-
1 ITEM(S) FOR: 22.50
SF/OD CHARGE: 35.00

RINA N SWIFT OR
ERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/03/10

ITEM	AMOUNT
0	22.50
TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113	

724559113300

UTO IMEPOD 555 AR POCAHONTAS

BXS Swift H-010549

MEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 363.92-
6 ITEM(S) FOR: 616.95
SF/OD CHARGE: 210.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/16/10

ITEM	AMOUNT	ITEM	AMOUNT	ITEM	AMOUNT
0	273.47	0	58.00	0	55.45
0	52.65	0	38.24	1639	139.14
			TRINA N SWIFT OR		
			TERRY S SWIFT		
			Redacted		
			POCAHONTAS AR 72455-9113		

724559113300

UTO IMEPOD 555 AR POCAHONTAS

BXS Swift H-010548

IMEPOD 0.990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 573.92-
1 ITEM(S) FOR: 56.74
ISF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

BANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/18/10

ITEM	AMOUNT	
0	56.74	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

AUTO IMEPOD 555 AR POCAHONTAS

724559113300

BXS Swift H-010547

MEPOD Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 25.15-
1 ITEM(S) FOR: 41.25
SF/OD CHARGE: 35.00

RINA N SWIFT OR
ERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/20/10

ITEM	AMOUNT	
1640	41.25	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

UTO IMEPOD 555 AR POCAHONTAS

724559113300

MEPOD... Redacted

0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 300.15-
2 ITEM(S) FOR: 240.00
SF/OD CHARGE: 70.00

RINA N SWIFT OR
ERRY S SWIFT
Redacted
OCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/23/10

ITEM	AMOUNT	ITEM	AMOUNT
0	30.00	1642	210.00
			TRINA N SWIFT OR
			TERRY S SWIFT
			Redacted
			POCAHONTAS AR 72455-9113

724559113300

UTO IMEPOD 555 AR POCAHONTAS

BXS Swift H-010544

MEPOD Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 220.04-
1 ITEM(S) FOR: 237.30
SF/OD CHARGE: 35.00

RINA N SWIFT OR
ERRY S SWIFT
Redacted
OCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 08/31/10

ITEM	AMOUNT	
1645	237.30	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

UTO IMEPOD 555 AR POCAHONTAS

724559113300

MEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT
FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES
INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST
OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 8.10-
1 ITEM(S) FOR: 18.26
SF/OD CHARGE: 35.00

RINA N SWIFT OR
TERRY S SWIFT
Redacted
OCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 09/07/10

ITEM	AMOUNT
0	18.26
TRINA N SWIFT OR	
TERRY S SWIFT	
Redacted	
OCAHONTAS AR 72455-9113	

724559113300

UTO IMEPOD 555 AR POCAHONTAS

MEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted099-0
BALANCE: 315.55-
2 ITEM(S) FOR: 272.45
ISF/OD CHARGE: 70.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

3ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 09/08/10

ITEM	AMOUNT	ITEM	AMOUNT
0	137.98	0	134.47
			TRINA N SWIFT OR
			TERRY S SWIFT
			Redacted
			POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

BXS Swift H-010540

MEFOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST OUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 385.55-
1 ITEM(S) FOR: 58.00
SF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

ANCORPSOUTH BRANCH - 555 DATE OF NOTICE 09/15/10

ITEM	AMOUNT
0	58.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

MEPNS Redacted 0990

NOTICE OF INSUFFICIENT FUNDS
THE CHECKS LISTED BELOW WERE PRESENTED FOR PAYMENT. SUFFICIENT FUNDS WERE NOT AVAILABLE TO PAY THESE ITEMS. THEY WERE RETURNED TO THE PAYEE, AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING THESE ITEMS. PLEASE ADJUST YOUR CHECKBOOK.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 40.85
1 ITEM(S) FOR: 215.69
FEE/OD CHARGE: 35.00
AMOUNT INSUFFICIENT: 174.84-

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

BANCORPSOUTH BRANCH - 555 DATE OF NOTICE 09/20/10

ITEM	AMOUNT	
0	215.69	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPNS 555 AR POCAHONTAS

BXS Swift H-010537

MEFOD Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 5.85
1 ITEM(S) FOR: 215.69
USE/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

MANCORSOUTH BRANCH - 555 DATE OF NOTICE 09/22/10

ITEM	AMOUNT	
0	215.69	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

MEPNS

Redacted

0990

NOTICE OF INSUFFICIENT FUNDS
THE CHECKS LISTED BELOW WERE PRESENTED FOR PAYMENT. SUFFICIENT FUNDS WERE NOT AVAILABLE TO PAY THESE ITEMS. THEY WERE RETURNED TO THE PAYEE, AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING THESE ITEMS. PLEASE ADJUST YOUR CHECKBOOK.

ACCOUNT NUMBER: Redacted099-0
BALANCE: 244.84-
1 ITEM(S) FOR: 66.80
ISE/OD CHARGE: 35.00
AMOUNT INSUFFICIENT: 311.64-

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

BANCORPSOUTH BRANCH - 555 DATE OF NOTICE 09/28/10

ITEM	AMOUNT	
1647	66.80	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPNS 555 AR POCAHONTAS

BXS Swift H-010535

IMEPOD... Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE ITEMS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE ITEMS. THE ITEMS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COSTS OF HANDLING. PLEASE ADJUST YOUR CHECKBOOK AND DEPOSIT FUNDS TO COVER THESE ITEMS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 75.73-
1 ITEM(S) FOR: 100.00
NSF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

WANCORPSOUTH BRANCH - 555 DATE OF NOTICE 10/13/10

ITEM	AMOUNT	
1646	100.00	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

PERIOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE TRANSACTIONS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE TRANSACTIONS. THE TRANSACTIONS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COST OF HANDLING PLEASE ADJUST YOUR RECORDS AND DEPOSIT FUNDS TO COVER THESE TRANSACTIONS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 166.54-
1 ITEM(S) FOR: 30.00
ISF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

LANCORPSOUTH BRANCH - 555 DATE OF NOTICE 10/25/10

ITEM	AMOUNT
0	30.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

724559113300

UTO IMEPOD 555 AR POCAHONTAS

IMEPOD 0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
 THE TRANSACTIONS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE
 THAT FUNDS WERE INSUFFICIENT TO PAY THESE TRANSACTIONS. THE TRANSACTIONS WERE
 PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COST OF HANDLING
 PLEASE ADJUST YOUR RECORDS AND DEPOSIT FUNDS TO COVER THESE TRANSACTIONS.

ACCOUNT NUMBER: Redacted 099-0
 BALANCE: 139.12-
 4 ITEM(S) FOR: 239.81
 NSF/OD CHARGE: 140.00

TRINA N SWIFT OR
 TERRY S SWIFT
 Redacted
 POCAHONTAS AR 72455-9113

WANCORPSOUTH BRANCH - 555 DATE OF NOTICE 11/17/10

ITEM	AMOUNT	ITEM	AMOUNT	ITEM	AMOUNT
0	127.67	0	38.26	0	13.25
1652	60.63				
			TRINA N SWIFT OR		
			TERRY S SWIFT		
			Redacted		
			POCAHONTAS AR 72455-9113		

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

BXS Swift H-010531

MEPOD... Redacted 0990

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE TRANSACTIONS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE TRANSACTIONS. THE TRANSACTIONS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COST OF HANDLING PLEASE ADJUST YOUR RECORDS AND DEPOSIT FUNDS TO COVER THESE TRANSACTIONS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 101.54-
1 ITEM(S) FOR: 122.66
ISF/OD CHARGE: 35.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

MANCORPSOUTH BRANCH - 555 DATE OF NOTICE 10/22/10

ITEM	AMOUNT	
0	122.66	TRINA N SWIFT OR TERRY S SWIFT Redacted POCAHONTAS AR 72455-9113

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

IMEPOD .0990

Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE TRANSACTIONS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE TRANSACTIONS. THE TRANSACTIONS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COST OF HANDLING PLEASE ADJUST YOUR RECORDS AND DEPOSIT FUNDS TO COVER THESE TRANSACTIONS.

ACCOUNT NUMBER: Redacted 099-0
BALANCE: 26.83-
2 ITEM(S) FOR: 56.99
NSF/OD CHARGE: 70.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

BANCORPSOUTH BRANCH -- 555 DATE OF NOTICE 12/08/10

ITEM	AMOUNT	ITEM	AMOUNT
0	39.93	0	17.06
		TRINA N SWIFT OR	
		TERRY S SWIFT	
		Redacted	
		POCAHONTAS AR 72455-9113	

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

MEPOD 0990 Redacted

NOTICE OF CHARGE FOR OVERDRAWN ACCOUNT
THE TRANSACTIONS LISTED BELOW WERE PRESENTED FOR PAYMENT. OUR RECORDS INDICATE THAT FUNDS WERE INSUFFICIENT TO PAY THESE TRANSACTIONS. THE TRANSACTIONS WERE PAID AND THE CHARGES INDICATED BELOW WERE ASSESSED TO COVER THE COST OF HANDLING PLEASE ADJUST YOUR RECORDS AND DEPOSIT FUNDS TO COVER THESE TRANSACTIONS.

ACCOUNT NUMBER: Redacted,099-0
BALANCE: 641.87-
6 ITEM(S) FOR: 1,790.62
ISF/OD CHARGE: 210.00

TRINA N SWIFT OR
TERRY S SWIFT
Redacted
POCAHONTAS AR 72455-9113

EARN HOW YOU CAN AVOID FEES AT WWW.BANCORPSOUTH.COM/AVOIDINGFEES

BANCORPSOUTH BRANCH - 555 DATE OF NOTICE 12/24/10

ITEM	AMOUNT	ITEM	AMOUNT	ITEM	AMOUNT
0	1,352.62	0	151.83	0	128.90
0	74.28	0	52.99	0	30.00
			TRINA N SWIFT OR		
			TERRY S SWIFT		
			Redacted		
			POCAHONTAS AR 72455-9113		

724559113300

AUTO IMEPOD 555 AR POCAHONTAS

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT)
OVERDRAFT LITIGATION)
))
MDL No. 2036)
Fourth Tranche)
_____)
))
THIS DOCUMENT RELATES TO:)
))
Shane Swift v. BancorpSouth, Inc.,)
S.D. Fla. Case No. 1:10-cv-23872-JLK)
_____)

**DEFENDANT BANCORPSOUTH BANK'S RESPONSES TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant BancorpSouth Bank ("BancorpSouth")¹ hereby submits its answers and objections to Plaintiff's First Set of Interrogatories ("Interrogatories").

GENERAL ANSWERS AND OBJECTIONS

BancorpSouth hereby incorporates each of these general answers and objections into its specific answers and objections to each of Plaintiff's Interrogatories, whether or not BancorpSouth

¹ In the definitions section of his interrogatories, Plaintiff defines "You" to refer to, "the above-named Defendant." The only defendant named in the interrogatories, however, is "BancorpSouth, Inc.," which is listed in the case style at the top of Plaintiff's Interrogatories. BancorpSouth, Inc., is not a proper defendant in this matter. Counsel for Plaintiff and Defendant discussed the proper BancorpSouth entity to name in this matter in 2010, and Plaintiff properly identified the defendant herein as BancorpSouth Bank in his Second Amended Complaint (DE # 994). BancorpSouth Bank, as the only defendant in this matter, is the entity responding to Plaintiff's interrogatories, and BancorpSouth Bank interprets any references to "Defendant" in Plaintiff's interrogatories to refer to BancorpSouth Bank.

refers to such general answers or objection in its specific answer to a specific Interrogatory.

1. BancorpSouth objects to the Interrogatories to the extent that they purport to seek information protected from disclosure by the attorney-client privilege, the work product doctrine, the joint defense or common interest privilege, or any other privilege, immunity, or exemption from disclosure.

2. BancorpSouth objects to the Interrogatories to the extent they call for the disclosure of information prohibited or otherwise protected from disclosure by any laws or regulations of any State or the United States.

3. BancorpSouth objects to the Interrogatories to the extent that they seek information outside of BancorpSouth's possession, custody, or control, and/or information that is also within Plaintiff's possession, custody or control. Nevertheless, as described in BancorpSouth's Responses to Plaintiff's First Request For Production, BancorpSouth will produce Swift's monthly statements and other documents related to Swift's BancorpSouth account that BancorpSouth regularly distributes to Plaintiff, to the extent that BancorpSouth has such documents within its possession, custody, or control.

4. BancorpSouth objects to the Interrogatories to the extent that they purport to impose upon BancorpSouth any duty or obligation that is in excess of those obligations that are imposed by the Federal Rules of Civil Procedure, the Local Rules, the Court's orders, or any other applicable law or rule. In particular, BancorpSouth objects to the Interrogatories to the extent that they purport to call for information neither relevant to the claims or defenses of the parties nor reasonably calculated to lead to the discovery of admissible evidence, and/or purport to impose a duty on BancorpSouth beyond undertaking a reasonably diligent search for requested information.

5. BancorpSouth objects to the timeframe of the Interrogatories as set forth in paragraph nine

(9) of the Interrogatories on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to the claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to the timeframe of the Interrogatories to the extent that the timeframe includes claims or damages that are barred by statutes of limitations, statutes of repose, or laches. The longest limitations period applicable to Plaintiff Swift's claims in his lawsuit is the five-year limitations period on his contract and ADTPA claims under Arkansas law. Plaintiff filed his original complaint in this matter on May 18, 2010. Therefore, any claims seeking compensation for overdraft fees assessed before May 18, 2005 are time-barred. Thus, for purposes of these answers, unless otherwise stated, BancorpSouth shall respond only for the period of January, 2005, to present (i.e., the date of these Interrogatories) in response to any requests regarding transactions which Plaintiff contends triggered compensable overdraft fees.

This limitation on BancorpSouth's responses shall not apply to responses related to information concerning the decisions regarding the order for posting electronic debit card transactions or other policies which were in effect during the alleged class period related to the posting of electronic debit card transactions. For responses related to policies or procedures related to posting order or paying debit card transactions into overdraft, or the decisions to adopt such policies, BancorpSouth shall produce documents only for the period of January, 2002 until the present (i.e., the date of these Interrogatories). The basis for this limitation is that BancorpSouth first adopted a policy of posting all transactions from highest dollar amount to lowest dollar amount in 2003, as first applied its "overdraft payment service" (as described in BancorpSouth's Responses to Plaintiff's First Set of Interrogatories) to debit card transactions in 2003.

6. BancorpSouth objects to the definition of " 'you,' 'your' and/or 'defendant' " to the extent it

purports to encompass "any affiliated entities" of BancorpSouth. BancorpSouth responds with respect to the entity named as defendant herein, BancorpSouth Bank.

7. BancorpSouth objects to the Interrogatories' definition of the term "Complaint" to the extent it purports to define that term to include any complaint pending in MDL 2036 other than the operative complaint *Swift v. BancorpSouth, Inc.*, S.D. Fla. Case No. 1:10-cv-23872-JLK.

8. BancorpSouth objects to the Interrogatories' definition of the term "Deposit Agreement" on the grounds that its reference to "all related documents which incorporate the Deposit Agreement" is vague and ambiguous. For purposes of these answers, BancorpSouth interprets the term "Deposit Agreement" to mean the "Deposit Account Terms and Conditions" attached as Exhibit A to Plaintiff's Second Amended Complaint and the "Account Information Statement" attached as part of Exhibit B to Plaintiff's Second Amended Complaint, and any earlier versions of these documents that applied to Swift's BancorpSouth account.

9. BancorpSouth objects to the Interrogatories' definition of the term "Item" on the grounds that its reference to "any debit or transaction processed through an account" is vague and ambiguous. BancorpSouth defines the term "Transaction" in the Account Information Statement. When BancorpSouth uses the term "Transaction" in these answers, BancorpSouth interprets and uses the term as it is defined in the Account Information Statement.

10. BancorpSouth objects to the Interrogatories' definition of the term "Account" to the extent that it purports to include accounts that cannot be accessed by an electronic debit card and/or on which overdraft fees cannot be incurred.

11. BancorpSouth further objects to the definition of the term "Account" on the grounds that the phrase "your institution" is vague and ambiguous. BancorpSouth responds with respect to the entity named as a defendant herein, BancorpSouth Bank.

12. BancorpSouth further objects to use of the phrase "other members of the proposed Class(es)" in the definition of the term "Account" on the grounds that no motion to certify any proposed class has been filed, that no Class has been or properly can be certified, and that members of the proposed Class(es) cannot readily be ascertained.

13. BancorpSouth objects to the Interrogatories' definition of the term "authorized" on the grounds that it is vague and ambiguous, and to the extent that it relies on the definition of "item" in the interrogatories (*see* objection number 9, above). With respect to use of the term "authorized" in connection with items initiated by use of an electronic debit card, BancorpSouth objects to any definition different from the process of authorization as specified by the rules and regulations of Visa, MasterCard, and similar networks with respect to debit cards accepted on their networks. For purposes of these answers, BancorpSouth will interpret the term "authorized" in this manner.

14. BancorpSouth objects to the Interrogatories' definition of the term "received" on the grounds that it is vague and ambiguous, and it is based on the definition of the term "authorized" (*see* objections number 13, above). BancorpSouth further objects to the definition of the term "received" to the extent that it depends on the formulation of "the date and time ... a dollar amount for the item is made available to you" because that formulation is vague and ambiguous. BancorpSouth further objects to the definition because it is inconsistent with banking practice and the operation of electronic debit card networks, and improperly conflates authorization of an electronic debit card transaction with receipt of an electronic debit card debit item for settlement of a definitive dollar amount.

15. BancorpSouth objects to the Interrogatories' definition of "overdraft fees" which includes a reference to the undefined phrase "sustained overdraft fees." BancorpSouth further objects to this definition because it does not make any distinction between charges assessed but not paid and

charges assessed and paid. For purposes of these Responses, BancorpSouth interprets the term "overdraft fees" to mean only overdraft fees incurred on consumer deposit accounts, which charges are both assessed and paid.

16. BancorpSouth objects to the Interrogatories to the extent they call for information related to any individual other than Swift, the only Plaintiff specifically named in the operative case *Shane Swift v. BancorpSouth, Inc.*, S.D. Fla. Case No. 1:10-cv-23872-JLK. BancorpSouth also objects to the definition of "Plaintiffs' account" to refer to "any bank account opened and maintained at your institution by any of the named Plaintiffs" to the extent it seeks to reach any account information related to any customer other than Swift.

17. Certain of the information sought in these Interrogatories can only be obtained and produced, as a practical matter by searching electronically stored information ("ESI") in the possession, custody, or control of BancorpSouth. A manual search for and production of such information would be unduly burdensome and oppressive, and requiring BancorpSouth manually to search for and produce the information sought in these Interrogatories would exceed the scope of its obligations under the Federal Rules of Civil Procedure. BancorpSouth is prepared to meet and confer with Plaintiff to discuss and agree upon appropriate protocols for searching and production of ESI, as specifically contemplated and required under the Federal Rules of Civil Procedure. BancorpSouth anticipates that the agreed-upon protocols will include, at a minimum, identification of custodians whose electronic records will be searched and agreed upon search terms that are reasonably designed to obtain ESI that is relevant to the parties' claims and defenses in this action. BancorpSouth provides its written responses to these Interrogatories with the understanding that it may need to supplement its responses to these Interrogatories after ESI protocols are agreed upon and the information is obtained from the ESI within BancorpSouth.

18. BancorpSouth has answered certain Interrogatories pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, referring Plaintiff to documents that BancorpSouth will produce that contain information responsive to one or more of the Interrogatories. BancorpSouth states that certain of these documents may only be obtained through the ESI protocol described above, in paragraph 17 of these General Responses and Objections.

19. Certain information called for in these Interrogatories is confidential and proprietary. BancorpSouth will produce such information only pursuant to an appropriate protective order entered by the Court. BancorpSouth is prepared to meet and confer with Plaintiff to discuss and agree upon an appropriate protective order. Further, to the extent any Interrogatory seeks customer-identifying information related to customers other than the named Plaintiff, or other customer confidential information that BancorpSouth is under an obligation to keep confidential, BancorpSouth will not produce that information.

20. BancorpSouth is continuing to compile information and documents responsive to the non-objectionable portion of the Interrogatories. All objections and answers are based on information presently known to BancorpSouth after reasonable inquiry performed to date. BancorpSouth's objections and answers as set forth herein are made without prejudice to BancorpSouth's right to assert additional or supplemental objections or responses. Accordingly, BancorpSouth reserves the right to supplement these answers and objections, and will do so as responsive, non-privileged information is located and compiled, pursuant to Fed. R. Civ. P. 26.

21. BancorpSouth objects to the general instruction in paragraph number five (5) of the Interrogatories which refers to documents that are "generated ... after the date of your answers" to the extent it is intended to reach documents that are prepared in anticipation of litigation in accordance with Fed. R. Civ. P. 26(b)(3).

22. BancorpSouth objects to the general instruction in paragraph number six (6) of the Interrogatories as there has been no agreement as to the production or format of a privilege log. Subject to this objection, with regard to the identification and protection of privileged documents and information, BancorpSouth will comply with the Fed. R. Civ. P. 26(b)(5).

23. BancorpSouth has made reasonable efforts to answer the Interrogatories, subject to its general and specific objections, as BancorpSouth understands and interprets each Interrogatory. If Plaintiff subsequently asserts any interpretation of any Interrogatory that differs from BancorpSouth's interpretation of the Interrogatory, BancorpSouth reserves the right to supplement and amend its objections and answers.

24. Nothing contained herein is an admission of the relevance or admissibility of any answer.

25. BancorpSouth is prepared to meet and confer with Plaintiff in an effort to resolve any questions or concerns regarding its general and specific objections.

RESPONSES TO FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons who have knowledge of facts you will use in opposing a motion for class certification; who have knowledge of the policies, practices and procedures you employed regarding the manner or sequence in which your customers' transactions are posted to their accounts; and who were employed and/or retained by you in connection with the development, operation, revision and/or maintenance of software used to determine overdrafts and overdraft fees.

ANSWER TO INTERROGATORY NO. 1: BancorpSouth objects to Interrogatory No. 1 on the grounds that it is premature, overly broad, and unduly burdensome. As phrased, Interrogatory No. 1, particularly the request for disclosure of all persons "who have knowledge of the policies, practices and procedures you employed regarding the manner or sequence in which your customers' transactions are posted to their accounts," would require disclosure of every current or former

BancorpSouth employee (since 2003) in Bank operations or at a BancorpSouth branch. BancorpSouth further objects to Interrogatory No. 1 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms and phrases "subject matter of this lawsuit" and "employed regarding the manner or sequence in which your customers' transactions are posted to their accounts." Subject to its general and specific objections, and using its best efforts to comprehend Plaintiff's vague terms, BancorpSouth states that the following individuals have substantial knowledge of facts or circumstances relevant to BancorpSouth's policies and procedures related to the assessment, collection, and refunding of overdraft fees: Michael Lindsey and Jeff Jagers. Subject to and without waiving the foregoing general and specific objections, BancorpSouth states that it continues to investigate in good faith the subjects identified in this Interrogatory.

INTERROGATORY NO. 2: Identify each overdraft fee you assessed against an account held by each Plaintiff named in the Complaint(s) and, for each such fee, identify each item that was the basis for the overdraft fee and state all facts that show the basis on which the account was deemed to have been subject to an overdraft fee.

ANSWER TO INTERROGATORY NO. 2: BancorpSouth objects to Interrogatory No. 2 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms and phrases "basis for the overdraft fee" and "basis on which the account was deemed to have been subject to an overdraft fee." BancorpSouth also objects to the use of the term "assessed" with regard to overdraft fees, because Plaintiff does not clarify whether this Interrogatory requests information regarding fees triggered by a transaction, fees actually charged, or fees collected, and does not clarify whether fees that were later refunded should be included. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d), related to Swift's accounts with BancorpSouth, which reflect reasonably available information concerning the transactional history of such accounts, for the time period of January, 2005, through the date of the

Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 7 and 8. BancorpSouth generally states that, with regard to debit card transactions before the effective date of Reg E in 2010, it charged an overdraft fee against a customer's account when a customer authorized a transaction that his account did not have sufficient funds to cover, as determined when the debit card transaction posted to the account. BancorpSouth also states that, even if a BancorpSouth customer authorizes a transaction at a time when, to the best BancorpSouth can determine, insufficient funds are in the account to cover the transaction, the transaction may not cause an overdraft (and an attendant overdraft fee) if the customer makes a deposit that posts the same banking day and which would cover the debit card transaction, because BancorpSouth posts all deposits for a given banking day before posting any debits. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 3: For each item identified in response to Interrogatory No. 2 as the basis for an overdraft fee, state: (a) the date and time you authorized the item; (b) the date and time you received the item; and (c) the date and time the item was debited from the account.

ANSWER TO INTERROGATORY NO. 3: BancorpSouth objects to this Interrogatory on the grounds that it is vague and ambiguous including the phrase "the basis for an overdraft fee." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents or ESI that it agrees to produce related to Swift's accounts with BancorpSouth (subject to agreed-upon appropriate protocols for searching and production of ESI, as discussed in General Objection No. 17 herein), which reflect reasonably available information concerning the transactional history of such accounts, for the time period of

January, 2005, through the date of the Interrogatories. *See also* BancorpSouth's Response to RFP No.

7. BancorpSouth further agrees to meet and confer with Plaintiff concerning whether a further narrative response is required after review of such documents.

INTERROGATORY NO. 4: For the period 1998 to the present, describe with particularity all policies, practices and procedures you used to determine the sequence in which items are posted to customers' accounts, including the dates any policies, practices or procedures were changed and the reason for such changes, and identify all persons with knowledge of the creation, implementation, modification, of such policies, practices and procedures.

ANSWER TO INTERROGATORY NO. 4: BancorpSouth objects to the timeframe of Interrogatory No. 4 on the grounds that it is overly broad, unduly burdensome, and requests information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to Interrogatory No. 4 because it seeks information which falls outside of the applicable statutes of limitations. Subject to and without waiving the foregoing objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the posting of electronic debit card transactions to customer accounts. *See also* BancorpSouth's Responses to RFP Nos. 9-11, 13, 22, 24, 38-41, 49-51, 53-54. BancorpSouth further states that, beginning in 2003, it posted the debits on checking accounts for a given day from highest dollar amount to lowest dollar amount. No debits for a given day are posted, however, until after all deposits for that day are posted to the customer's account. Prior to 2003, BancorpSouth's posted transactions in an order dictated by the type of transaction, and to post high-to-low within each type of transaction if there was more than one transaction of a particular type. Earnings Performance Group ("EPG") and other consulting firms approached BancorpSouth in the early 2000s offering consulting services that they represented would increase BancorpSouth's revenue. BancorpSouth engaged EPG in 2002. EPG proposed numerous policies for increasing bank profitability, including

adopting a high-to-low posting order for debits. BancorpSouth did not adopt all of EPG's recommendations, but BancorpSouth did adopt a high-to-low posting order. BancorpSouth adopted the high-to-low posting order for debits to, among other reasons, increase non-interest revenue and streamline the posting process by eliminating the distinctions between types of transactions.

INTERROGATORY NO. 5: Describe with particularity how the policies, practices and procedures identified in Interrogatory No. 4 varied or vary from state to state, if at all.

ANSWER TO INTERROGATORY NO. 5: BancorpSouth incorporates by reference its objections to Interrogatory No. 4. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the order of posting of electronic debit card transactions to customer accounts. *See also* BancorpSouth's Responses to RFP Nos. 9-11, 13, 22, 24, 38-41, 49-51, 53-54. BancorpSouth further states that practices described in BancorpSouth's response to Interrogatory 4 do not vary from state to state. BancorpSouth further states that when it acquired a bank that used a different posting order, the acquired bank's posting order was used for its account holders until the acquired bank and its account holders could be converted to BancorpSouth's systems. For the time period relevant to this lawsuit, BancorpSouth states that it acquired American State Bank in 2005. Between November 30, 2005 and April 21, 2006, the account posting order for former account holders at American State Bank differed from the posting order on preexisting BancorpSouth accounts.

INTERROGATORY NO. 6: If the policies, practices and procedures regarding overdraft fees you have followed during the 180 days immediately preceding the date on which you answer these interrogatories are materially different than the policies, practices and procedures relating to overdraft fees you followed from 1998 to present, describe in detail all ways in which your current policies, practices and procedures differ, explain when, how and why they changed, and identify all documents that describe, refer or relate to the differences or changes.

ANSWER TO INTERROGATORY NO. 6: BancorpSouth objects to Interrogatory No. 6

on the ground that it potentially reaches BancorpSouth's policies, practices, and procedures for setting the amount of an individual overdraft fee, and the Interrogatory is, therefore, overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth also objects to the vague term "policies and procedures regarding overdraft fees." BancorpSouth further objects to the timeframe of this Interrogatory in that the request for information dating to 1998 is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence, and because it falls outside of applicable statutes of limitations. Subject to and without waiving the foregoing general and specific objections, BancorpSouth states that in anticipation of the effective date of "Reg E," and in order to comply with Reg E, BancorpSouth changed its policies in 2010 with regard to enrollment of customers in its overdraft payments service (as described in response to Interrogatory No. 12 herein). BancorpSouth now requires all customers to affirmatively opt in to the overdraft payment service in connection with transactions governed by Reg E. For more information regarding BancorpSouth's overdraft payment service, see response to Interrogatory No. 12 herein. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 7: Describe with particularity all actions you have taken to inform your customers of your policies, practices and procedures of posting items in the order of highest to lowest dollar amount, including when, how and by whom each such action was taken.

ANSWER TO INTERROGATORY NO. 7: BancorpSouth objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and to the extent that it purports to

require BancorpSouth to identify each and every separate document, oral conversation, communication, or other responsive item concerning the posting of certain items to customer accounts in highest to lowest order. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiffs to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning information provided to customers concerning the posting of debit card transactions in order of highest to lowest dollar amount, for the time period of 2003 through the date of these Interrogatories. *See also* BancorpSouth's Response to RFP Nos. 1-6, 11, 17, 26, 48 and 55.

BancorpSouth further states that it has fully and regularly disclosed its policy of posting debit card transactions in order of highest to lowest dollar amount since it began following this policy in 2003. These disclosures were made, among other methods of disclosing BancorpSouth's posting policies, in the Deposit Account Terms and Conditions and Account Information Statements, revised from time to time, which have governed BancorpSouth accounts during all periods since 2003. BancorpSouth also refers Plaintiff to the Deposit Account Terms and Conditions, attached as Exhibit A to Swift's Second Amended Complaint, which states, in part:

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us . . .

and refers Plaintiff to the Account Information Statement, attached as Exhibit B to Swift's Second Amended Complaint. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information,

and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 8: State the manner in which you have defined or otherwise described the term "overdraft" to your customers.

ANSWER TO INTERROGATORY NO. 8: Subject to and without waiving the foregoing general objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the actions it has taken to inform customers of BancorpSouth's policies, practices and procedures regarding the posting of electronic debit card transactions, for the time period of 2003 through the date of the Interrogatories, including exemplars of its Deposit Account Terms and Conditions and Account Information. *See also* BancorpSouth's Responses to RFP Nos. 1-6, 11, 17, 26 and 55. BancorpSouth further agrees to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

In addition, BancorpSouth refers Plaintiff to the Deposit Account Terms and Conditions attached as Exhibit A to Swift's Second Amended Complaint, which states, among other things, as follows:

LIABILITY: ... Each of you also agrees to be jointly and severally (solitarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys.

* * *

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (*see* OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order

we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

BancorpSouth also refers Plaintiff to the "About Overdrafts" section of the Account Information Statement, attached as Exhibit B to Swift's Second Amended Complaint, which states in part:

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

INTERROGATORY NO. 9: Describe with particularity each step, including each form of communication, involved in an electronic debit transaction, beginning with the initiation of the transaction, continuing through your receipt of notice of the dollar amount of the transaction and authorization of the transaction, and ending with your posting of the transaction to the customer's account and your assessment of overdraft fee, if any, based on the transaction.

ANSWER TO INTERROGATORY NO. 9: BancorpSouth objects to Interrogatory No. 9 on the grounds that it is vague and ambiguous, especially as to its use of the undefined terms and phrases "electronic debit transaction," "initiation," "receipt," and "notice." BancorpSouth further objects on the grounds that this Interrogatory is overly broad and unduly burdensome (e.g., the steps entailed may differ depending on the type of transaction), and to the extent that it calls for information that is not within the knowledge, custody, or control of BancorpSouth. BancorpSouth further objects on the ground that Interrogatory No. 9 is inaccurate to the extent it states that BancorpSouth is presented with information reflecting the final amount of a transaction prior to or at the time of initiation or authorization of the transaction.

Subject to and without waiving the foregoing general and specific objections, BancorpSouth

refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the steps involved in posting of transactions to customer accounts, for the period of 2003 through the date of the Interrogatories. BancorpSouth also refers Plaintiff to the Omnibus Motion to Dismiss and/or for Judgment on the Pleadings and Incorporated Memorandum of Law [DE # 217] at 8-12 (discussing the authorization and settlement process for electronic debit card transactions), and to BancorpSouth's Motion to Dismiss Plaintiff's Second Amended Complaint [DE# 1068] in this matter. *See also* BancorpSouth's Responses to RFPs 34-36, 41, 69-70. BancorpSouth further states as follows:

BancorpSouth's processing of debit card transaction (whether a "PIN" or a "signature" transaction) begins when BancorpSouth's systems receive an inquiry from a credit card processor. For a signature transaction, the transaction is routed to BancorpSouth via a third-party card processing vendor ("FDR"). The FDR system determines whether the transaction is or is not authorized. Authorization is based on whether the requested transaction exceeds the total of what the FDR system calculates the customer's account balance to be. FDR initiates a balance inquiry to BancorpSouth's Stratus system, and subtracts any signature transactions authorized from up to three prior days that have not "settled." If the requested transaction exceeds the total of the account balance (as calculated by FDR), the transaction will not be authorized. A signature transaction does not post to a customer's account, and does not reduce the customer's balance, until the merchant clears the transaction, which can be several days later. A signature transaction posts to the customer's account only after that the merchant clears the transaction. Signature transactions post at the end of the day when all other transactions for that day post, in order from highest dollar amount to lowest dollar amount. The posting of the transaction occurs on BancorpSouth's account demand deposit

account system ("DDA" or "mainframe"). If the transaction at issue causes the customer's account to be overdrawn or causes an overdrawn account to be further overdrawn, an overdraft fee will be assessed against the customer's account. The overdraft fee will be charged against the customer's account on the day following the transaction that triggered the fee.

For debit card "PIN" transactions, the process is similar, but not identical. PIN transactions are authorized or denied by BancorpSouth's "Stratus" system. Authorization is based on whether the requested transaction exceeds the total of what the Stratus system calculates the customer's account balance to be. The Stratus system will include the overdraft limit for that customer if the customer is enrolled in the overdraft payment service. The Stratus system's balance information is regularly updated by communication with BancorpSouth's DDA system. If the requested transaction exceeds the total of the account balance (as calculated by Stratus) the transaction will not be authorized. A PIN transaction posts to the customer's account, on the DDA, at the end of the day when all other transactions for that day post, in order from highest dollar amount to lowest dollar amount. If the transaction at issue causes the customer's account to be overdrawn or causes an overdrawn account to be further overdrawn, an overdraft fee will be assessed against the customer's account. The overdraft fee will be charged against the customer's account on the day following the transaction that triggered the fee.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 10: For each step in the process described in your answer to Interrogatory No. 9, identify each computer system or database used to transmit and/or store information and for each such database or system, identify its task and function and describe in detail where and how you retain the information associated with each step and the process

by which such records or information can be accessed:

ANSWER TO INTERROGATORY NO. 10: In Response to Interrogatory No. 10, BancorpSouth incorporates by reference its specific objections to Interrogatory No. 9. BancorpSouth further objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning computer systems and databases concerning electronic debit card transactions, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 32-33, 41 and 69-70. BancorpSouth further states that this Interrogatory overlaps with Interrogatory No. 9 to a substantial extent; therefore, BancorpSouth refers Plaintiff to the portions of BancorpSouth's response to Interrogatory No. 9 that are responsive to this Interrogatory.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 11: On an annual basis for each year since 2002 and for each State in which you maintain customer accounts, state (a) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions you assessed against your customers' accounts; (b) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions assessed against customers accounts that you have forgiven, waived, reversed or otherwise not collected; and (c) the number of your customers' accounts that have been assessed more than one overdraft fee based on debit card and/or ATM transactions on a single day.

ANSWER TO INTERROGATORY NO. 11: BancorpSouth objects to Interrogatory No.

11 on the grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence, and falls outside of applicable statutes of limitations. BancorpSouth also objects to the use of the vague and undefined phrase "overdraft fees based on debit card and/or ATM transactions." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents and/or data that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the aggregate amounts and number of customer accounts requested, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 27 and 28. BancorpSouth further agrees to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 12: Describe in detail how you determine whether to authorize a debit transaction made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

ANSWER TO INTERROGATORY NO. 12: BancorpSouth objects to Interrogatory No. 12 on the grounds that it is vague and ambiguous, especially as it relates to the phrase "authorize a debit transaction made on a customer's account." BancorpSouth further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the method by which BancorpSouth determines whether or

not to authorize an electronic debit card transaction, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Response to RFP Nos. 34-36. BancorpSouth further states that, since 2003, BancorpSouth has provided an "overdraft payment service" with a varying overdraft limit. A customer can both have an overdraft protection product (such as a linked savings account, credit card, or line of credit to cover transactions that would overdraw the customer's checking account) and be enrolled in the overdraft payment service. Under the overdraft payment service, BancorpSouth provides an amount over and above the customer's available balance for which BancorpSouth will authorize payment of debit card transactions initiated by the customer. Under the overdraft payment service, each enrolled account holder has an overdraft limit. The bank may also, at its discretion, pay an item into overdraft above the overdraft limit. The amount of the overdraft limit may vary for each customer, and may vary for an individual customer, from statement period to statement period. The amount of the overdraft limit is affected by such factors as the length of time the customer's account has been open, the average balance in the account over the previous 90 days, and the number of times the customer has overdrawn his account in the previous 12 months. For an account enrolled in the overdraft payment service, whether a particular debit card transaction is authorized or not is determined by comparing the amount of the requested debit card transaction with the amount in the customer's account (as best BancorpSouth can determine in light of the uncertainties of what other transactions will be requested or will arrive before all of the transactions post at the end of the banking day) plus the amount of the customer's currently effective overdraft limit for the account. If the apparently available balance plus the overdraft limit exceeds the amount of the requested debit card transaction, the debit card transaction will be authorized; if the amount of the requested debit card transaction exceeds the apparently available balance plus the overdraft limit, the transaction will not be authorized.

Since its inception, the existence of the overdraft payment service has been disclosed to customers in BancorpSouth's Account Information Statement, among other methods of disclosure. At all times, a BancorpSouth customer has had the option to remove the overdraft payment service from his account on request. Although the default rule from 2003 until the effective date of Reg E in 2010 was for an account holder to be enrolled in the overdraft payment service unless he opted out, BancorpSouth changed its policies in 2010 to comply with Reg E. BancorpSouth now requires all customers to affirmatively opt in to the overdraft payment service for debit card and ATM card transactions in order to use the service for those transactions.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 13: Describe in detail the manner in which your Hogan or RDS (or equivalent) system operates with regard to the processing of items.

ANSWER TO INTERROGATORY NO. 13: BancorpSouth objects to Interrogatory No. 13 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms "equivalent" and "processing." BancorpSouth also objects to the use of the undefined and vague term "Hogan or RDS (or equivalent) system." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the system(s) it employs, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 41, 69 and 70. BancorpSouth further states that this Interrogatory overlaps with Interrogatory No. 9 to a substantial extent; therefore, BancorpSouth refers Plaintiff to the portions of BancorpSouth's

response to Interrogatory No. 9 that are responsive to this Interrogatory.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 14: Identify all third parties, other than legal counsel or federal agencies, who have provided any documents, advice, assistance, proposals, reports, studies or services of any kind to you in connection with your policies, practices and procedures relating to the determination or assessment of overdraft fees, or the revenue projected to be derived from such fees.

ANSWER TO INTERROGATORY NO. 14: BancorpSouth objects to Interrogatory No. 14 on the grounds that it is overly broad, unduly burdensome and seeks information that is not relevant to any claim or defense in this action and/or not reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to Interrogatory No. 14 because it potentially reaches BancorpSouth's policies, practices, and procedures for, among other things, setting the amount of an overdraft fee. Subject to and without waiving the foregoing general and specific objections, BancorpSouth agrees to conduct a reasonable inquiry and identify the requested third parties.

Respectfully submitted this 27th day of June, 2011.

PARKER, HUDSON, RAINER & DOBBS LLP



Eric Jon Taylor
Georgia Bar No. 699966
William J. Holley, II
Georgia Bar No. 362310
David B. Darden
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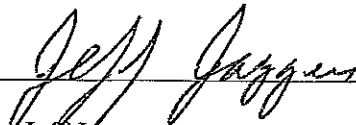
1500 Marquis Two Tower
285 Peachtree Center Avenue N.E.
Atlanta, Georgia 30303
Telephone: (404) 523-5000
Facsimile: (404)522-8409

Counsel for Defendant BancorpSouth Bank

VERIFICATION

I, Jeff Jaggers, being duly sworn, depose and say that I am Senior Vice President for BancorpSouth Bank ("BancorpSouth"). I have reviewed the foregoing Defendant BancorpSouth's Responses to Plaintiff's First Set of Interrogatories, which I understand have been compiled from a number of sources within BancorpSouth with the assistance of BancorpSouth's counsel. To the best of my knowledge, information, and belief, the factual information contained in Defendant BancorpSouth's Objections and Responses to Plaintiff's First Set of Interrogatories is true and accurate.

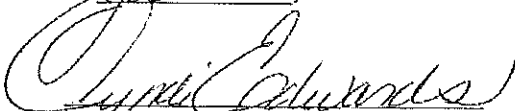
This 27th day of June, 2011.



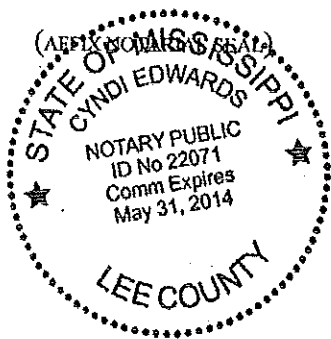
Name: Jeff Jaggers

Position: Senior Vice President

Sworn to and subscribed
before me this 27 day
of June, 2011.


Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT BANCORPSOUTH BANK'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Robert C. Gilbert, Esq.
Alters Law Firm, P.A.
4141 N.E. 2nd Avenue, Suite 201
Miami, Florida 33137

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Darren T. Kaplan, Esq.
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2300 Promenade II
1230 Peachtree Street, NE
Atlanta, Georgia 30309

This 27th day of June, 2011.


Eric Jon Taylor

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT)
OVERDRAFT LITIGATION)
MDL NO. 2036)
_____)

FILED UNDER SEAL

THIS DOCUMENT RELATES TO:)
FIRST TRANCHE ACTION)
Luquetta v. JPMorgan Chase Bank, N.A.)
S.D. Fla. Case No. 1:09-cv-23432-JLK)
C.D. Cal. Case No. CV09-6967-GHK)
_____)

**DECLARATION OF ROBERT D. WILLIG
IN SUPPORT OF JPMORGAN CHASE BANK, N.A.’S
OPPOSITION TO CLASS CERTIFICATION IN THE LUQUETTA ACTION**

I, Robert D. Willig, declare as follows:

I. QUALIFICATIONS

1. My name is Robert D. Willig. I am Professor of Economics and Public Affairs at the Woodrow Wilson School of Public and International Affairs and the Economics Department of Princeton University, a position I have held since 1978. I have served as the faculty Chair of our professional Masters of Public Affairs program, and currently serve as Coordinator of the economics field in the Woodrow Wilson School. Before 1978, I was Supervisor in the Economics Research Department of Bell Laboratories. My teaching and research have specialized in the fields of industrial organization, government-business relations, and welfare theory.

2. I served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the U.S. Department of Justice from 1989 to 1991. I also served on the Defense Science Board task force on the antitrust aspects of defense industry consolidation and on the Governor of New Jersey's task force on the market pricing of electricity.

3. I am the author of *Welfare Analysis of Policies Affecting Prices and Products*, *Contestable Markets and the Theory of Industry Structure* (with William Baumol and John Panzar), and numerous articles and book chapters. I am also a co-editor of *The Handbook of Industrial Organization*, and have served on the editorial boards of the *American Economic Review*, the *Journal of Industrial Economics* and the MIT Press Series on regulation. I am an elected Fellow of the Econometric Society and have been an associate of The Center for International Studies.

4. I have engaged in theoretical and applied analyses and been a consultant to firms in various sectors of the economy. On other matters, I have worked as a consultant with the Federal Trade Commission, the Organization for Economic Cooperation and Development, the Inter-American Development Bank, the World Bank, and a wide variety of private clients. I serve as a Senior Consultant at Compass Lexecon, an economic consulting firm specializing in antitrust and regulatory economics analysis. A full list of my articles and other professional publications and activities is presented in my *curriculum vitae*, which is attached along with a list of prior testimony as Appendix 1.

II. INTRODUCTION AND SUMMARY OF CONCLUSIONS

5. Plaintiffs allege that JP Morgan Chase Bank, N.A. (“Chase”) has wrongfully engaged in “unfair, deceptive, and unconscionable assessment and collection of excessive

overdraft fees” arising out of debit card transactions.¹ In the motion for class certification filed April 25, 2011, plaintiffs assert that “[t]o carry out this scheme, Chase manipulated debit card transactions by, among other things, employing a bookkeeping trick to re-sequence transactions from highest-to-lowest dollar amount at the time of posting.”² In addition, plaintiffs assert that “Chase leveraged its overdraft fee scheme into a billion dollar revenue stream by providing inaccurate and misleading information to Class members.”³ Plaintiffs proffer the Declaration of Arthur Olsen, who is described as an information technology (“IT”) expert, concerning the identification of “those Chase customers who were ‘harmed’ (*i.e.*, assessed additional overdraft fees) as a result of Chase’s practice of posting debit card transactions in the order of highest-to-lowest in dollar amount instead of in chronological order.”⁴ The Olsen Declaration does not address any distinct “harm” associated with any inaccurate and misleading information.

6. The Olsen Declaration refers to testimony he provided in a different case, *Gutierrez v. Wells Fargo Bank, N.A.*, Case No. 07-05923WHA (N.D. Cal.), (“*Gutierrez* litigation”). He then addresses how he can apply the methodology he followed in the *Gutierrez*

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1. Second Amended Class Action Complaint In Re: Checking Account Overdraft Litigation (“Complaint”), *Luquetta, et al. v. JPMorgan Chase Bank, N.A.*, (“*Luquetta* case”), ¶1. I understand that Andrea Luquetta is presently the sole operative named plaintiff and proposed class representative in this case.
 2. Plaintiffs’ Motion for Class Certification and Incorporated Memorandum of Law, April 25, 2011 (“Class Motion”), p. 2.
 3. Class Motion, p. 17.
 4. Appendix IV, Declaration of Arthur Olsen in Support of Plaintiffs’ Motion for Class Certification, April 25, 2011 (“Olsen Declaration.”), ¶2. Mr. Olsen’s statement suggests that the high-to-low posting order applied only to debit card transactions. In actuality, the high-to-low posting order applied to all debit transactions (other than fees) posted on a given day.

litigation to the *Luquetta* litigation. The Olsen Declaration states that he has applied the same methodology he used in *Gutierrez* “in order to calculate the extent of ‘harm’ to each of the named plaintiffs during the time period for which I was provided data” in a companion case to the *Luquetta* litigation, *Lopez v. JP Morgan Chase Bank, N.A.*⁵ Mr. Olsen did not, however, perform such an analysis of plaintiff Andrea Luquetta, who is the named plaintiff in the *Luquetta* case. Mr. Olsen also did not actually perform any such analysis for any “class” in either the *Lopez* case or the *Luquetta* case. Mr. Olsen disclaims having any opinion on whether application of his methodology would constitute a “proper damage analysis” for the *Luquetta* case. The Olsen Declaration states: “I do not mean to suggest that this is the only or proper damage analysis for the Chase litigation.”⁶

A. Assignment

7. Plaintiff’s motion for class certification defines the proposed class as follows:

All JPMorgan Chase Bank, N.A. (“Chase”) customers in the United States who had or have one or more consumer accounts and who, from applicable statutes of limitation through August 13, 2010 (“Class Period”), incurred one or more overdraft fees as a result of Chase’s practice of sequencing debit card transactions from highest to lowest.”⁷

5. Olsen Declaration, ¶¶9-42.

6. Olsen Declaration, ¶42.

7. Class Motion, p. 1. It should be noted that Chase did not have a “practice of sequencing debit card transactions from highest to lowest”. Instead, it sequenced all non-fee debit transactions (including ATM, checks/ACH) that were posted in a given day from highest to lowest.

8. The complaint in the *Luquetta* case proposed that Ms. Luquetta represent a class of only California customers of Chase.⁸ The class certification motion refers, however, to a nationwide class. I understand that the class certification motion's reference to a nationwide class may have been based on a theory that a single class could be certified jointly for the *Lopez* and *Luquetta* cases. I assume that the permissibility of doing so is a legal question, and I do not advance any opinion on that matter. I am also advised that the Court has ordered consideration of class certification at this time only in the *Luquetta* case. Accordingly, this report proceeds on the basis that the Olsen Declaration would be applied specifically to the *Luquetta* case by itself. My opinions would not substantially change, however, if the class certification were to be evaluated in terms of the *Luquetta* and *Lopez* cases jointly.

9. I have been asked by counsel for Chase to provide an economic analysis of the Olsen Declaration in relation to this proposed class definition, and to provide my opinion on whether Mr. Olsen has presented an economically meaningful and appropriate methodology for determining class-wide damages in the *Luquetta* case. Although the Olsen Declaration does not address class questions related specifically to a California-only class, it does appear to contemplate that his statements would apply to a California-only class because California customers are included within a nationwide class. As I explain below, Mr. Olsen's proposed damages methodology makes no economic sense for determining damages for Ms. Luquetta because she never had transactions that were sorted high-to-low under the Chase system.⁹

8. Complaint, ¶22.

9. Like all potential class members in California whose accounts predated the WAMU conversion, Ms. Luquetta was a legacy Washington Mutual ("WAMU") customer. Legacy WAMU accounts were sorted under WAMU's method which was not high-to-low until they were converted to the Chase system on October 23, 2009. Ms. Luquetta's account was closed before that conversion date. Therefore, her account was never subject to the high-to-

Nonetheless, for purposes of this report, I assume that there are potential *Luquetta* class members whose accounts were subject to the Chase high-to-low posting order. By making this assumption, I am able to analyze the class claims made in the Olsen Declaration.

B. Summary Of Conclusions

10. My conclusions can be summarized as follows:

- The class definition is dependent on Plaintiffs' arbitrary choice of the damages scenario. Mr. Olsen's provision of alternative damages scenarios implies different sets of individuals who incurred damages depending on the damages scenario.
- Plaintiffs' damages scenarios are not based on economic analysis. Economic analysis would require a determination of a scenario (or scenarios) that likely would have occurred absent the alleged wrongful conduct. Mr. Olsen does not provide any economic analysis showing that there is a reasonable likelihood that any of his proposed scenarios would have occurred absent the alleged wrongful conduct.
- Mr. Olsen's analysis fails to provide an economically meaningful reliable measure of damages because he fails to account for changes in the set of paid transactions and the implications of those changes. Under any of Mr. Olsen's proposed damages scenarios, the set of transactions that would have been consummated (*i.e.*, for which the bank would have debited the customer's account) often would change depending on the alternative "but-for" posting sort order. This could occur, for example, because a check that was in fact paid in the actual world would be hypothetically assigned by Mr. Olsen's scenario to a later position in the payment order. If the check had actually been assigned that later position, it would not have been paid by the bank because it would have exceeded applicable overdraft limits. Instead, such a check would have been returned unpaid "not sufficient funds" ("NSF"). Because of this problem, Mr. Olsen's analysis mismeasures individuals' overdraft fee amounts, overlooks adverse costs and consequences of NSF checks under his scenarios, and would wrongly prescribe class membership.

(...continued)
low posting order.

- Mr. Olsen’s analysis also fails to provide an economically meaningful or reliable measure of damages because it fails to take into account changes in customer overdrafting behavior that would be an expected consequence of making changes in the payment posting system.

11. My conclusions are based on my experience and expertise as an economist, and on my review of documents and data. The documents and data that I have relied upon are listed in Appendix 2. If additional materials are made available to me, I may modify or update my conclusions.

12. The remainder of this report is organized as follows: Section III contains industry background and explains the development of the Chase debit card system. Section IV contains an analysis of the variation in the set of allegedly damaged class members depending on the particular damages scenario. In Section V, I examine Mr. Olsen’s damages scenarios and show that they are not based on any coherent or credible economic analysis. In Section VI, I demonstrate that the set of transactions that hypothetically would have been paid by the bank varies with the proposed “but-for” posting orders, which removes any supposed economic meaning from Mr. Olsen’s damages models. Section VII contains my concluding remarks.

III. BACKGROUND

A. Debit Card Industry

13. Debit cards are issued by banks to holders of checking accounts. When a cardholder initiates a debit card purchase, an electronic message is sent from the merchant’s point-of-sale (“POS”) terminal to the customer’s bank through a system of networks (*i.e.*, the merchant’s bank’s network, the VISA or MasterCard Networks and the cardholder’s bank’s network), seeking authorization for the transaction. Upon receiving the information, the bank determines whether the card is valid (*e.g.*, the card was not reported lost or stolen) and whether the account has sufficient funds, or whether the bank will otherwise authorize the card

transaction. It then returns an electronic authorization message to the merchant indicating whether or not the transaction is authorized.

14. There are two ways in which a debit cardholder can use her card for POS purchases. She can enter her personal identification number on the merchant's POS terminal (similar to making an ATM transaction) – which I will refer to as a “PIN” or “online” transaction. Alternatively, she can use her card, as a credit card is typically used, without a PIN; in which case a signature (or waiver of signature) is typically required – which I will refer to as a “signature” or “offline” transaction. In the case of the PIN debit transaction, the customer's bank verifies the PIN as part of the authorization process. With a PIN debit transaction, the cardholder may also receive additional cash along with her purchase. Signature transactions do not offer this feature.

15. The distinction between the two transaction types is relevant to this matter, in part because of the difference in the time it takes to post each type of transaction. PIN debit transactions typically post to the cardholder's checking account within one business day after authorization (again similar to an ATM transaction), and some banks (notably WAMU) posted them immediately after each transaction was completed at the merchant's POS. Signature debit transactions, on the other hand, usually post to the cardholder's checking account within two to three business days after authorization. Therefore, the issuing bank is exposed to greater credit risk on signature debit transactions, following a settlement presentation of the transaction from the VISA or MasterCard network to the card-issuing bank. This separate settlement presentation of the transaction from the network to the issuing bank for signature transactions is necessary because a significant portion of signature transactions, but not PIN transactions, are completed

for an amount different from the amount initially authorized by the bank.¹⁰ The customer is ordinarily in control of whether to treat the transaction as a PIN transaction or instead as a signature transaction, and may have personal reasons for preferring one to the other.

16. In the early 1990s, signature debit transactions accounted for about 40 percent of all debit card transactions. In the mid-1990s and early 2000s, the number of signature debit transactions grew significantly faster than the number of PIN debit transactions. In the 2005 – 2007 timeframe, signature debit transactions accounted for about 60 percent of total debit transactions.¹¹ Thus, the average lag time between authorization and posting of debit card transactions increased over time.

17. The usage of debit cards (both PIN and signature) has increased dramatically relative to checks (including ACH checks) and credit cards as well. In the early 1990s, the percentage of credit and debit card transactions that was attributable to debit cards was less than ten percent. By the late 2000s, this percentage had increased to over 60 percent. The average transaction amount on debit cards (about \$40) is about half that on credit cards.¹²

18. To illustrate how the time lag between authorization and posting of a debit card transaction can lead to overdrafts and OD fees, consider the following example. Assume the cardholder's account had a balance on day 1 of \$500. The cardholder makes an authorized

10. This happens, for example, when a tip is added at a restaurant following the authorization of the food service purchase amount; when follow-up charges are added to a hotel or rental car transaction; and, with gasoline transactions, because pursuant to network rules they are typically authorized for a nominal amount lower than the actual cost of fuel dispensed.

11. F. Hayashi, R. J. Sullivan and S. E. Weiner, "A Guide to the ATM and Debit Card Industry," *Federal Reserve Bank of Kansas City* (2006; updated 2011 – unpublished).

12. The Nilson Reports (1991-2010) includes transactions processed on the VISA and MasterCard networks.

signature debit purchase on that day totaling \$250. On day 2, a check written by the cardholder in the amount of \$475 clears her account, reducing the balance to \$25. On day 3, the \$250 debit transaction is submitted to the bank for payment. Because the bank authorized the transaction, it must pay the \$250 charge. The cardholder's account then would have a balance of -\$225 and the bank may then impose an overdraft ("OD") fee.

B. Chase's Authorization And Clearing Processes

19. I understand that the primary issue in this case involves the order in which Chase posted transactions to a cardholder's checking account. Plaintiffs assert that Chase's debit card posting order during the class period generated excessive OD fees on transactions. Here I present background information on Chase's authorization and clearing processes during the relevant period.¹³

20. My discussion will refer to what I call the "Chase" system of posting debits to checking accounts.¹⁴ In referring to the Chase system, I am referring to the system used by Chase from July 2003 until March 29, 2010. During this time, Chase posted debits (except as noted below) in high-to-low order, each business day. There are two respects in which the relevant time period might not appear to match the definition of the class as stated in the Class Motion, which refers to the period "from applicable statutes of limitations through August 13, 2010."¹⁵ First, it is unclear what the beginning date is for determining membership in the proposed class, because the beginning of the relevant period is defined only as "from applicable

13. Information on Chase's authorization and clearing processes is based on discussions with Chase personnel.

14. The Chase high-to-low posting order did not apply to Nevada accounts.

15. Class Motion, p. 1.

statutes of limitations” rather than stating any specific date. For purposes of this analysis, I assume that the relevant period is the period in which Chase was posting non-fee debit transactions in high-to-low order. Mr. Olsen does not make any adjustment for any other posting system during the “class period.”¹⁶ Of course, to the extent that Chase was not posting in high-to-low order during the period, Mr. Olsen’s statements in his Declaration are irrelevant and inapplicable. Second, on March 29, 2010, Chase implemented a different system, and no longer posted transactions in high-to-low order (as I discuss more fully below).

21. In addition, there were certain transition periods, resulting from acquisitions of other banks’ businesses, in which certain accounts in the Chase system were not posted high-to-low. For example, Chase acquired accounts of the failed bank WAMU from the FDIC in September 2008, and continued to handle those accounts on the WAMU computer system for a number of months before converting them to the Chase high-to-low posting order. Ms. Luquetta’s own account, which originated at WAMU, was never posted high-to-low, for example, because it was closed before Chase converted California WAMU accounts to the Chase system on October 23, 2009. For purposes of this report, I use the term “relevant period” to mean the period from July 2003 to March 29, 2010, excluding transition periods for conversion of accounts that were subject to conversion.

22. In the Chase system during the relevant period, checking account daily activity was posted to accounts in a batch process at the end of each business day. In this batch process, deposits and other credits were posted to an account first. The majority of checking account

16. I note that the Olsen Declaration refers to “Chase’s posting practice during the class period” (Olsen Declaration, ¶39) but that he does not state what he understands the “class period” to be. I also note that his Declaration states that he was unable to apply his methodology to Ms. Luquetta’s account.

credits were deposits of checks and cash via an ATM or bank teller, and ACH deposits. An ATM or teller deposit cleared when the payor's bank settled with Chase.¹⁷ ACH deposits were received electronically and generally cleared on the day received. An example of an ACH deposit is a direct payroll deposit.

23. Any fees incurred from the prior day's activity were then posted to the account.¹⁸ Lastly, normal debits to an account (*e.g.*, checks, ACH withdrawals, ATM withdrawals, debit card transactions, etc.) were posted in the sequence of high-to-low transaction dollar amount.

24. The Chase posting order was different from that of WAMU, where Ms. Luquetta had her account. WAMU's computer system did not post debit-card items in high-to-low order. Debit-card PIN transactions were posted at the time of the transaction, and signature transactions were posted in the order received from the bank's processors – what plaintiffs refer to as “real time.”¹⁹

25. In batch processing at the end of each business day, the Chase system determined whether one or more cleared items for a given accountholder would result in a negative account balance. If so, and if the item was an authorized debit card transaction, Chase would pay the item (as it was required to do by network rules). If the item was a check, ACH transaction, or

17. The deposits of certain types of checks, such as checks drawn on the U.S. Treasury and certified checks, clear on the day of deposit and, like cash, are immediately reflected in account's available balance. For other checks, Chase allowed a portion of the check's value as a credit to a customer's available balance per check deposited while the check is pending the clearing process. If the payor's bank was also Chase, the deposit typically cleared more quickly.

18. In November 2009, Chase modified its system so that most of the fees incurred by transactions on a given day were posted on the same day after all other transactions were posted.

19. Class Motion, Appendix I, p. 8, fn.18.

other item that Chase had no legal obligation to pay, Chase first checked whether the accountholder had overdraft protection (“ODP”) coverage. Chase offered ODP coverage for checking accounts that were linked to Chase savings accounts or Chase credit cards. If an account was overdrawn and had ODP, Chase transferred funds in \$50 increments until the account had a positive balance. Chase charged a fee of \$10 on each day an ODP transfer was made.

26. Chase transferred ODP funds into an accountholder’s checking account if available ODP funds exceeded the amount of an overdraft in the checking account. Otherwise, if the ODP funds available for transfer were less than the amount necessary to cover the OD, or if a negative-balance account did not have ODP coverage, then the following would occur: First, as noted, Chase honored all authorized debit card transactions -- and charged an OD fee per transaction. Similarly, if an ATM withdrawal resulted in an OD, Chase charged an OD fee for that transaction. For checks and ACH debits, Chase either paid the item and charged an OD fee or returned the item to the payee due to insufficient funds and charged an NSF fee. To determine whether such items would be paid, Chase’s system checked the customer’s “matrix” value. The “matrix” value was an amount that Chase was willing to cover, calculated separately for each customer based on a variety of historical factors, including the customer’s past OD activity and, as of 2004, her credit score. Matrix values were recomputed each day. Some customers had a zero matrix value; for others, the value ranged from \$40 to over \$4,000.²⁰ If the amount of the OD was less than the matrix limit combined with the running ledger balance and available ODP funds, Chase paid the check or ACH debit and charged the customer an OD fee. Otherwise,

20. I understand that Chase did not disclose matrix values to its customers.

Chase flagged the item as not paid because of NSF. However, in some instances Chase personnel overrode the matrix value and paid the check.

27. For most of the class period, Chase had a tiered system of OD / NSF fees, where the level of the fee depended on the level of OD and NSF activity in the prior 12 months. If a customer had an OD or NSF on a given day but had none in the prior 12 months, then the fee assessed with each OD and/or NSF item on a given day was \$25 (for up to six fees prior to January 28, 2010, and three thereafter). If the customer had one, two or three days in the prior 12 months with OD and/or NSF fees, then the fee was \$32 per item. The fee was \$35 per item if there were four or more days with OD and/or NSF fees in the prior 12 months.

28. Chase also typically charged a one-time “extended overdraft” fee after an account remained overdrawn for more than five business days. For example, if an account was overdrawn at the end of the day Monday and remained in that status through Friday, the account was charged a fee that posted on the following Monday. The amount and terms of this fee varied by state and over time.

29. Chase had in place a policy of allowing the reversal of an OD fee the first time a customer complained in any year. Beyond that, Chase personnel reversed OD fees at their discretion. Chase’s computer records reflect the reversal of OD fees, but do not indicate which fee in particular was being waived. For example, assume that on day 1 a customer received an OD fee relating to a check; on day 3 she received an OD fee relating to a debit card transaction; and on day 10 she requested and was granted a fee reversal from Chase. No information existed that allows one to determine whether the reversal related to the check OD from day 1 or the debit card OD from day 3.

30. Both debit card purchases and ATM withdrawals were generally each (but not always) “authorized” at the time the transaction was initiated by the customer.²¹ ATM withdrawals were only authorized if the customer had a sufficient “available” balance – that is, positive funds on deposit in the account that were not subject to a “hold” – sufficient to cover the withdrawal.²² Chase’s debit card POS authorization process relied on three items: the customer’s “available” balance; her ODP available funds, if any; and the “matrix” amount. When a customer initiated a Chase debit card transaction with a merchant (whether signature or PIN), the merchant sent an electronic authorization request to Chase. If the transaction amount was within the sum of these three items, the purchase was authorized. If authorized, Chase also placed a “memo hold” on the account reflecting the debit card purchase amount, which lowered the available balance. Thus, subsequent authorizations took into account prior within day authorizations.

31. The authorizations for PIN debit card transactions were routed over proprietary networks (*e.g.*, NYCE) or the VISA and MasterCard networks, while authorizations for signature debit card transactions were routed primarily over the VISA and MasterCard networks and followed the clearing procedures established by those networks. The PIN debit transactions

21. “Authorization” means that Chase provided an assurance to the merchant or ATM owner, in accordance with network rules, that Chase would pay the item when presented. Absent such authorization, a merchant or ATM operator would ordinarily not accept the card for payment. However, for some debit-card transactions, the merchant does accept the transaction without seeking authorization, and the transaction is later presented to Chase for settlement and clearing without any authorization or other prior communication of the transaction to Chase having occurred.

22. It nonetheless is possible for an ATM withdrawal to trigger an overdraft charge as part of the posting process. For example, if the sum of all debits to an account posted on a given day results in a negative balance, and the ATM withdrawal was the smallest valued transaction, the overdraft charge would be associated with it. However, I understand that ATM withdrawals rarely are the items generating overdraft fees.

typically cleared on the day of the transaction (particularly for “on-us” transactions, where both the merchant’s bank and the customer’s bank were Chase), or the following business day. The posting date for signature debit card transactions routed through the VISA and MasterCard networks typically was two business days after the transaction.

32. Even though at the time of authorization the debit transaction may have exceeded “available” funds in the account, this did not mean that the transaction resulted in an OD when settled (that is, when the bank actually had to pay for the transaction). The cardholder may have known that the purchase exceeded her “available” balance at the time the transaction was initiated, but also knew, for example, that she was making a deposit or getting paid by direct deposit that day, or the next day, or otherwise before the end of the business day on which the debit card transaction would be settled -- so the transaction would not result in an OD when settled. Conversely, because of the lag time between the debit card authorization and settlement, the customer’s available balance may have exceeded the transaction amount at time of authorization but resulted in an OD at settlement because of other intervening activity (*e.g.*, payment of an incoming check by the bank). The fact that signature debit transactions have a longer window between transaction and clearing made them more susceptible to the customer being able to “cover” a negative “available” balance before the transaction was settled by the bank and thus to avoid an OD fee even though the customer had initiated transactions that exceeded her “available” balance.

33. Chase did not have the capability to inform the cardholder, as part of the authorization process at the merchant’s POS that the transaction might result in an OD based on her ODP available balance and/or her matrix value. VISA, MasterCard, and other network standards do not enable the card issuing bank to communicate with the card issuer through the

merchant's card acceptance terminal. Customers were, however, able to communicate with Chase by telephone or computer in advance of any transaction in order to determine balance information, if they chose to do so.

34. On March 29, 2010 Chase implemented a new checking account posting order, which is currently in effect. Its general design is to assign a "date and time stamp" to debit card, ATM, and teller transactions, as of the time of initiation, and then to post all such transactions at "batch" in chronological order of the date and time stamp, followed by other transactions (*e.g.*, checks and ACH debits) in high-to-low order. For debit card transactions, the new system relies upon the date and time from Chase's authorization.²³ Under this new system, Chase first posts deposits and any fees from a prior day. Next, Chase posts time-stamped transactions in chronological order. If two or more transactions have the same date and time, they are ordered high-to-low. Next, checks and other non-time-stamped debits are posted high-to-low. Finally, OD and NSF fees, and other fees, if any, are posted.

35. Chase changed its sort order in anticipation of a July 2010 change in Federal Reserve rules ("Reg E") that prohibited banks from charging OD fees on debit card transactions that had been authorized – unless the customer had "opted-in" to such fees. Typically, unless the customer opted-in, Chase would not authorize debit card transactions that exceeded the "available" balance. Unless a customer affirmatively opted-out earlier, as of July 2010, Chase treated new customers as opt-outs, and as of August 2010 Chase treated existing customers as opt-outs.

23. Electronic transactions that did not have an authorization (*e.g.*, recurring payments authorized by the customer before the initiation of the series of payments) would be processed like a check.

C. Benefits to Customers From Chase's Authorization And Overdraft Systems

36. The Chase system during the relevant period had certain features that are useful to note here in connection with considerations discussed more fully below. First, the debit card authorization and overdraft system provided a convenient way for debit cardholders to pay for transactions with a debit card even when their account balances were close to zero or negative. By authorizing debit card transactions on accounts with low or negative balances, Chase enabled consumers to make purchases that otherwise would have been denied or made with greater inconvenience. In this way, Chase's system allowed customers to have the use of Chase's credit to cover transactions, for a short time, without a charge to the customer.

37. Second, applying OD charges to customers who took advantage of Chase's credit in this way, but did not cover the withdrawals from their accounts sufficiently promptly, was a way for Chase to recover compensation for the service it provided. When a customer was using Chase's credit, rather than relying on her own deposit balance, as the basis for debit card transactions, there were costs or risks for Chase. These included Chase's cost of funds. In addition, Chase bore a risk that the customer would not later make a deposit to cover the transaction.

38. Excessive customer overdrafts could result in significant costs to Chase. I understand that Chase incurs losses of millions of dollars per year because customers overdraw their accounts and then fail to cover the overdraft.²⁴ By charging OD fees, Chase created a disincentive for debit cardholders to overuse the overdraft services.

24. For example, Ms. Luquetta overdraw her bank account by more than \$1,000, which still remains outstanding more than 18 months after the account was closed. Luquetta Deposition, pp. 282-83.

39. Third, there is no “natural” posting order. Transactions could be posted in the order that would always minimize OD fees. Alternatively, transactions could be posted highest to lowest in order to maximize the likelihood that the largest (and presumably most important) transactions, such as mortgage payments, will be paid instead of being returned due to NSF. For example, if a customer’s mortgage or rent check bounces, the customer may be disadvantaged in multiple ways. In addition to incurring an NSF fee, the customer is likely to incur a non-payment or bounced-check penalty imposed by the payee, possibly suffer late fees and interest charges, need to scramble to cover the unpaid amount, and conceivably suffer further injury through a diminished credit rating.

40. The high-to-low posting order provides a straightforward way to handle the posting of multiple transaction types (*e.g.*, ATM, checks, ACH, debit card) that do not have a common timing characteristic such as an authorization time stamp. For example, it is not possible to choose an overall “chronological” posting rule because no “time stamp” is normally associated with checks and certain other transactions, and the time lag between initiation and presentation of checks and similar transactions is indeterminate and may be substantial. Under the Chase system, customers benefit from Chase’s practice of posting debits on the day of settlement rather than initiation. This gives the customer the opportunity to make deposits during the period between initiation (for debit card transactions, authorization) of the transaction and settlement in order to avoid fees for interim negative available balances. On the date of settlement, there is no feasible method to integrate time-stamped transactions such as debit card transactions and non-timed transactions such as checks in chronological order. Accordingly, if a decision is to be made to post debit card transactions in chronological order of time-stamp of authorization, such a plan would leave unsettled whether to post all checks before all debit

transactions (*e.g.*, on a theory that the checks might have been written earlier), or later (which would maximize the likelihood that checks would bounce). Customers are in a position to avoid such complications, and avoid OD fees, generally by keeping track of their transactions and not overdrawing their accounts.

41. The Complaint alleges in the *Luquetta* case that Chase's high-to-low posting order was wrongful as implemented. I have not been asked to offer an opinion regarding the plaintiffs' liability claims. Instead, in the following sections, I provide an economic analysis of plaintiffs' class certification claims as articulated in the Olsen Declaration.

IV. PLAINTIFFS' CLASS DEFINITION IS INDETERMINATE BECAUSE IT DEPENDS ON ALTERNATIVE DAMAGES SCENARIOS

42. In the Olsen Declaration, Mr. Olsen does not claim to have ascertained which Chase customers make up the proposed class as defined in plaintiff's class certification motion. Nor does Mr. Olsen claim to have determined a proper methodology for determining what Chase customers make up the proposed class. Rather, Mr. Olsen claims only that, if a method is selected to define a proper damage analysis for the lawsuit, then he claims that he can develop a computer system (based on work he did in the *Gutierrez* litigation) to identify those customers who are "harmed" as defined by that "proper damage analysis." The Olsen Declaration specifically disclaims that he has determined the "proper damage analysis."²⁵

43. Accordingly, as I show in this section, the composition of the proposed class is indeterminate, and cannot be ascertained on any basis provided by Mr. Olsen in his Declaration without additional information or judgments.

25. Olsen Declaration, ¶42.

A. **The Class Definition is Indeterminate Because It Depends On First Identifying a Proper Damages Analysis**

44. Not all Chase customers with overdraft fees are potential class members. The Class Motion defines the proposed class as follows:

All JPMorgan Chase Bank, N.A. (“Chase”) customers in the United States who had or have one or more consumer accounts and who, from applicable statutes of limitation through August 13, 2010 (“Class Period”), incurred one or more overdraft fees as a result of Chase’s practice of sequencing debit card transactions from highest to lowest.²⁶

This definition includes only customers who incurred overdraft fees “as a result” of Chase’s high-to-low posting system, compared with some other posting system. In order to know who such customers are, it is necessary to know the alternative posting system with which Chase’s system is to be compared. The Olsen Declaration indicates that the comparison is to be made to a system using a chronological order. His Declaration indicates that members of the proposed class would be “the specific customers who were ‘harmed’ by Chase’s posting practice during the class period, as compared to an alternative posting order where debit card and ATM transactions are posted in chronological order based on authorization date and time.”²⁷

45. The Olsen Declaration does not provide further information about what “chronological” system would be the basis of a proper damage analysis. Instead, there is a discussion of his work in the *Gutierrez* litigation. In that litigation, Mr. Olsen offered a series of 10 different damages scenarios in the form of alternative posting orders, each of which generated a different, but overlapping, set of harmed customers. In the *Luquetta* litigation, Mr. Olsen

26. Class Motion, p. 1.

27. Olsen Declaration, ¶39.

envisions the same general approach in which there are potentially a number of proposed damages scenarios, each of which would identify a different set of potentially harmed customers. In his Declaration, Mr. Olsen specifically describes the *Gutierrez* alternative scenarios and one other scenario, which he describes as being “similar to the ‘Scenario 2A’ alternative posting ‘scenario’” he presented in the *Gutierrez* case.²⁸ This alternative however is somewhat different from Scenario 2A.

46. Because the composition of the proposed class as defined above would depend on what alternative damages scenario was selected, the composition of the proposed class cannot be ascertained at this time. Accordingly, a proper damages analysis with a meaningful alternative scenario must be chosen. Then, the proper damages analysis has to be actually carried out in order to ascertain who is in the class. That is, the damages analysis and the class membership are circular: Class membership can only be determined after a damages analysis is carried out based on the records of the members of the class. There are two problems here for ascertaining class membership.

47. First, Mr. Olsen has not set forth any analysis of what damages analysis would be *proper* in this case. As noted, he identifies at least 11 different damages “scenarios,” but he does not offer any views or analysis about the correctness or applicability of any of them as being a proper damages analysis in the *Luquetta* litigation. He does not hold himself out as having the qualifications to determine whether any of them is a proper damages analysis in this litigation. On the contrary, Mr. Olsen specifically disclaims judgment on the matter. He says, in

28. Olsen Declaration, ¶42.

connection with the alternative described in ¶42 of his Declaration: “I do not mean to suggest that this is the only or proper damages analysis for the Chase litigation.”

48. Second, Mr. Olsen has not undertaken to apply any of his alternative scenarios to the Chase customer base in order to actually ascertain which specific Chase customers would be in the proposed class.²⁹ Indeed, Mr. Olsen does not even apply any damages analysis to the named plaintiff, Ms. Luquetta, and he does not state whether he has any opinion whether she would be in the class that she represents.

49. The foregoing problems are substantial deficiencies. As I will discuss below, Ms. Luquetta herself is not in the class as defined. Moreover, even accepting Mr. Olsen’s ideas at face value, the actual membership of the proposed class, once ascertained based on his theoretical alternative damages “scenarios,” would vary substantially depending on which scenario is selected. Accordingly, the Olsen Declaration is not sufficient to indicate how one would ascertain what Chase customers would actually be in the proposed class.

B. Under Mr. Olsen’s Methodology Ms. Luquetta is Not a Member of the Proposed Class

50. The basic methodology of any damages model is to identify the alleged wrongful conduct and then to posit a hypothetical “but-for” scenario that eliminates that conduct. In this case, the alleged wrongful conduct, as articulated by Mr. Olsen, is the imposition of the Chase high-to-low posting order on debit card transactions.³⁰ Mr. Olsen does not attempt to undertake

29. Mr. Olsen does discuss the four named plaintiffs in the *Lopez* case, and determines that, under one scenario, they would be class members of a class in the *Lopez* case.

30. As explained above, Chase actually sorted all customer initiated debit transactions that were posted in a given day in high-to-low posting order, not just debit card transactions.

any such analysis using Ms. Luquetta's account.³¹ If he were to do so, the example would fail to show damages in any economically meaningful way for the following basic reason: Ms. Luquetta was not ever subject to the Chase high-to-low posting system. Ms. Luquetta was a WAMU customer and WAMU accounts were posted according to a "real-time" method. All WAMU accounts in California remained on the WAMU system until October 23, 2009. However, Ms. Luquetta's account was closed on October 14, 2009, before the conversion on October 23. As a result, she was never subject to the high-to-low posting order and therefore any methodology designed to measure damages stemming from the high-to-low posting order would not apply to her.

C. Mr. Olsen's Proposed Posting Orders In The *Gutierrez* Litigation And Described In His Declaration Vary Widely

51. As I explain in more detail below in Section V, there are many problems with applying to this case any of the damages "scenarios" discussed in the Olsen Declaration, whether based on the *Gutierrez* case or otherwise. Mr. Olsen does not address these problems, and he has not actually used any proposed "scenario" to ascertain a proposed class in this litigation. Rather, the Olsen Declaration states only that he has described possible scenarios "to illustrate" what a damages analysis might be like.³²

52. In the *Gutierrez* litigation, Mr. Olsen presented a series of ten alternative damages "scenarios." He provided no economic basis for establishing which, if any, of these "scenarios"

31. I understand that Mr. Olsen did not have account data related to Ms. Luquetta's account as of the writing of the Olsen Declaration. Nonetheless, he has since received the data and has not supplemented the Olsen Declaration.

32. Olsen Declaration, ¶42.

would constitute the most likely but-for world to be used to calculate damages. In fact, these ten scenarios provided a wide range of damages for a varying set of accountholders. According to Mr. Olsen's supplemental expert report in the *Gutierrez* litigation, his scenarios provided a wide range of impact on a "class" that could comprise anywhere between 693,423 and 1,503,733 accountholders. Table 1 provides a description of the hypothetical posting orders in Mr. Olsen's ten scenarios, along with the number of class members he calculated in the *Gutierrez* litigation. The difference between 693,423 accountholders and 1,503,733 accountholders is large, both in absolute and relative terms.

Table 1
Summary of Olsen's Scenarios in the *Gutierrez* Litigation

Scenario	Posting Order	Number of Class Members	
		After LIFO Reversal	After 30 Day Reversal
1	ATM Transactions, High-To-Low Debit Card and Checks/ACH Transactions, Low-to-High	n/a	n/a
1A	ATM and Debit Card Transactions, Low-To-High Checks and ACH Transactions, Low-to-High	1,503,733	1,457,281
2	Debit Card Transactions Without Time-Stamps, Low-to-High Time-Stamped Debit Card Transactions, Chronologically Checks/ACH Transactions, High-To-Low	n/a	n/a
2A	Time-Stamped Debit Card Transactions, Chronologically Debit Card Transactions Without Time-Stamps, Low-to-High Checks/ACH Transactions, High-To-Low	1,192,364	1,144,577
2B	Checks/ACH Transactions, High-To-Low Debit Card Transactions Without Time-Stamps, Low-to-High Time-Stamped Debit Card Transactions, Chronologically	867,678	826,770
2C	Checks/ACH Transactions, High-To-Low Time-Stamped Debit Card Transactions, Chronologically Debit Card Transactions Without Time-Stamps, Low-to-High	867,645	826,734
3	Debit Card Transactions Without Time-Stamps, High-to-Low Time-Stamped Debit Card Transactions, Chronologically Checks/ACH Transactions, High-To-Low	n/a	n/a
3A	Time-Stamped Debit Card Transactions, Chronologically Debit Card Transactions Without Time-Stamps, High-to-Low Checks/ACH Transactions, High-To-Low	1,108,679	1,061,948
3B	Checks/ACH Transactions, High-To-Low Debit Card Transactions Without Time-Stamps, High-to-Low Time-Stamped Debit Card Transactions, Chronologically	731,649	693,423
3C	Checks/ACH Transactions, High-To-Low Time-Stamped Debit Card Transactions, Chronologically Debit Card Transactions Without Time-Stamps, High-to-Low	731,709	693,470

Source: Olsen *Gutierrez* Supplemental Report.

Note: Mr. Olsen does not report number of class members for Scenarios 1, 2, and 3 in the Olsen *Gutierrez* Supplemental Report.

53. In the Olsen Declaration, Mr. Olsen also acknowledges variation in the number of harmed customers (*i.e.*, the class definition) in the *Gutierrez* litigation *within* just one of his arbitrary damages scenarios (Scenario 2A).³³ Mr. Olsen's acknowledgement of these within-

³³ Olsen Declaration, ¶29.

scenario variations provides a fundamental example of how the number of potential claimants varies with changes in Mr. Olsen's assumptions regarding his "but-for" scenarios. This example stems from Mr. Olsen's alternative assumptions used to address the issue of reversals. Reversals occur when the bank credits a customer's account to offset some or all OD fees incurred on an earlier day (or days). A reversal appears as a credit transaction posted on a day at some point after the initial posting of the OD fee. The reversal is not linked to any particular OD fee and can be posted as early as one day after the OD fee, or as much as 30 days (as Mr. Olsen assumed) or more after the OD fee.³⁴ Mr. Olsen recognized that reversals needed to be netted out against the claimed overcharge on OD fees, but he was unable to model the process of reversals that likely would have occurred in the "but-for" world. In the *Gutierrez* litigation, Mr. Olsen attempted to deal with this problem by making two different *ad hoc* assumptions. One was his "LIFO" assumption under which he reverses OD fees on a "last in/first out" basis. That is, if a reversal is posted on given date, Mr. Olsen assumed that it applied to the last OD fee incurred prior to that date. Alternatively, Mr. Olsen made what he called the "30-Day" assumption to deal with the possibility that a particular reversal applies to an OD fee that was incurred prior to the last OD fee. Mr. Olsen's presentation of the two alternative assumptions reveals the *ad hoc*, arbitrary nature of his damages methodology. Moreover, depending on the choice of one assumption or the other, the two variants generated substantially different sets of identified claimants – that is, the class would be composed of substantially different people. Mr.

34. Deposition of Ralph O. Slenker III, p. 166.

Olsen found at least 47,787 customers identified as harmed under one of his two assumptions, but not harmed under the other assumption.³⁵

54. Because Chase's national customer base is substantially larger than the Wells Fargo California customer base at issue in the *Gutierrez* litigation, these figures suggest that the variation in the number of allegedly harmed Chase customers in this example could be much greater than 47,787. More importantly, this is just one variation within one of the alternative "scenarios" referred to in the Olsen Declaration. As I now explain, the number and identity of potential Chase claimants varies substantially with variations in Mr. Olsen's assumed damages scenarios.

D. The Set Of Allegedly Harmed Customers Varies With Changes In The Proposed Damages Scenario

55. Using a sample of actual Chase accounts, I applied Mr. Olsen's methodology and damages scenarios from the *Gutierrez* litigation to identify customers that appear to be "harmed" using Mr. Olsen's proposed methodology under one scenario, but not others. Table 2 shows examples of these types of customers from the Chase sample. It shows the actual Chase posting for two customers' daily activity and the "but-for" posting under Mr. Olsen's Scenarios 2A and 2B. The fundamental difference between those two scenarios is that in his Scenario 2A checks and ACH debits are posted *after* debit transactions, while in Scenario 2B checks and ACH debits are posted *before*. The first customer reflected in Table 2 had \$35 of harm under Scenario 2A,

35. Olsen Declaration, ¶29. The figure 47,787 is the difference between Mr. Olsen's estimate of the number of harmed customers under the "LIFO" assumption (1,192,364) and the number harmed under the "30-Day" assumption (1,144,577). The difference between these two estimates is the lower bound of the number that was identified as harmed under one assumption but not the other, as long as the "30-Day" claimant set is not a complete subset of the "LIFO" claimant set.

but no harm under Scenario 2B. Conversely, the second customer had zero harm under Scenario 2A, but \$35 of harm under Scenario 2B. The examples illustrate that different damages scenarios are likely to generate different sets of potential plaintiffs. Thus, Mr. Olsen would be expected to identify a different set of allegedly harmed class members depending on the particular arbitrary scenario that is chosen as the basis of damages.

Table 2
Consumer Account Examples: "Harm" under One Scenario but not the Other
Olsen Proposed Scenarios 2A and 2B

Original Chase Posting			Olsen Proposed Posting, Scenario 2A				Olsen Proposed Posting, Scenario 2B					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
- overdraft transactions												
Account DIM Number: 601601, Posting date: 03/15/2010, Beginning Balance: \$78.93 The daily OD limit value: \$1,000.00, the available ODP funds: \$0.00												
Beginning Balance		78.93			Beginning Balance	78.93				Beginning Balance		78.93
ACH Debit	-180.00	-101.07	3/12/10	7:03:34	ATM Purchase	-28.43	-50.50			ACH Debit	-180.00	-101.07
ATM Purchase	-28.43	-129.50			ACH Debit	-180.00	-129.50	3/12/10	7:03:34	ATM Purchase	-28.43	-129.50
OD Fees	-70.00	-199.50			OD Fees	-35.00	-164.50			OD Fees	-70.00	-199.50
NSF Fees	0.00	-199.50			NSF Fees	0.00	-164.50			NSF Fees	0.00	-199.50
					OD Damages	35.00				OD Damages	0.00	
Account DIM Number: 21152734, Posting date: 12/14/2009, Beginning Balance: \$271.75 The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		271.75			Beginning Balance	271.75				Beginning Balance		271.75
ATM Purchase	-219.99	51.76	12/11/09	10:59:00	ATM Purchase with Cash Back	-55.05	216.70			ACH Debit	-36.79	234.96
ATM Purchase with Cash Back	-55.05	-3.29	12/11/09	11:04:06	ATM Purchase	-219.99	-3.29	12/11/09	10:59:00	ATM Purchase with Cash Back	-55.05	179.91
ACH Debit	-36.79	-40.08	12/11/09	15:42:33	ATM Purchase w/ PIN	-1.49	-4.78	12/11/09	11:04:06	ATM Purchase	-219.99	-40.08
ATM Purchase w/ PIN	-1.49	-41.57			ACH Debit	-36.79	-41.57	12/11/09	15:42:33	ATM Purchase w/ PIN	-1.49	-41.57
OD Fees	-105.00	-146.57			OD Fees	-105.00	-146.57			OD Fees	-70.00	-111.57
NSF Fees	0.00	-146.57			NSF Fees	0.00	-146.57			NSF Fees	0.00	-111.57
					OD Damages	0.00				OD Damages	35.00	

Source: JPMorgan Chase Bank, N.A.

Notes: Olsen proposed posting, Scenario 2A, assumes the following order of transactions:

- a. Deposits and fees;
- b. Cash items;
- c. Debit card transactions with time information (chronologically);
- d. Debit card transactions without time information (low-to-high);
- e. Checks and ACH, high to low;
- f. All other transactions.

Olsen proposed posting, Scenario 2B, assumes the following order of transactions:

- a. Deposits and fees;
- b. Cash items;
- c. Checks and ACH, high to low;
- d. Debit card transactions without time information (low-to-high);
- e. Debit card transactions with time information (chronologically);
- f. All other transactions.

Olsen proposed postings assume that posting status does not change under new posting

56. Furthermore, as I discuss below in Section VI, there are individual class members (and others) who are likely to be worse off in the “but-for” world relative the actual world. This arises because some individuals would have check or ACH debits that would be designated NSF (“bounced”) in Mr. Olsen’s “but-for” scenario, while those same transactions have been paid by

the bank in actual world. This phenomenon of individuals who appear worse off in the “but-for” world varies in its impacts depending on the choice of Olsen damages scenario. That is, there are perhaps numerous individuals for whom this phenomenon arises under one of Mr. Olsen’s damages scenarios, but not the others.

57. The implications of this observation are twofold. First, the arbitrary choice of a damages scenario determines arbitrarily the set of allegedly “harmed” plaintiffs who would make up the proposed class. Second, the arbitrary choice of a damages scenario also generates sets of class members who present a “conflict,” in the sense that some of them appear to have *benefited* from the alleged wrongful conduct relative to a particular “but-for” scenario.

V. MR. OLSEN’S DAMAGES SCENARIOS ARE NOT BASED ON ANY ECONOMIC ANALYSIS

58. As noted, Mr. Olsen states no opinion as to whether any of the scenarios he proposed in the *Gutierrez* litigation constitute a “proper damage analysis.”³⁶ In this section, I discuss the economic analysis required to generate a “proper damage analysis.” I show that Mr. Olsen’s proposed scenarios do not meet even the basic economic criteria for a credible and appropriate damages analysis.

A. The Starting Point Of An Economic Damages Methodology Is An Accurate Description Of The Alleged Wrongful Conduct

59. The common element of all economic analyses of damages is a determination of the state of the world that likely existed absent, or “but for,” the alleged wrongful conduct.³⁷

36. Olsen Declaration, ¶42. (“I have applied the same methodology as I used in the *Gutierrez* case in order to calculate the extent of ‘harm’ to each of the named plaintiffs during the time period for which I was provided data. I do not mean to suggest this is the only or proper damage analysis for the Chase litigation”).

37. In performing any damages analysis, the damages expert makes the initial assumption that plaintiffs prevail on the relevant questions of liability. Otherwise, there would be no

This is often referred to as the “but-for” world or scenario. The starting point of such an analysis is a meaningful description of the alleged wrongful conduct. Plaintiffs make a number of related claims about Chase’s alleged wrongful conduct, namely that Chase sought to maximize the number of OD fees charged to customers by re-sequencing transactions from high to low while making representations that customers could accurately track their accounts in real time.³⁸ Based on this characterization, the alleged wrongful conduct could be described as consisting of: (1) Chase setting the debit card posting order as high-to-low, rather than posting debit card transactions in real time based on authorization, and (2) misrepresenting to customers the basis for OD fees on debit card transactions.³⁹

60. Mr. Olsen simplifies the alleged wrongful conduct as “Chase’s practice of posting debit card transactions in the order of highest-to-lowest in dollar amount instead of in chronological order.”⁴⁰ In so doing, The Olsen Declaration appears to oversimplify posting issues. He also eliminates from any damages consideration—whether to increase damages or to

(...continued)

damages. In this report, for purposes of evaluating Mr. Olsen’s damages methodology and determining whether individual damages can be calculated on a class-wide basis, I assume that plaintiffs prevail on liability. I have not been asked to offer my opinion on any liability questions.

38. Class Motion, p. 2.

39. Elsewhere plaintiffs allege that Chase’s system of authorizing debit card transactions that would generate overdrafts through use of the undisclosed “matrix” values constitutes an element of the alleged wrongful conduct. It is not clear whether plaintiffs’ allegations relate to the existence of the matrix itself or the alleged non-disclosure. In any event, determining whether and the extent that an individual is harmed by Chase’s authorization policies requires an individualized analysis of each plaintiff’s benefits from being allowed to use his or her debit card when their account does not have sufficient funds to cover purchases.

40. Olsen Declaration, ¶2.

decrease them—the “misrepresentation” issues that are advanced in the Complaint and the Class Motion.

61. As explained above in Section IV, an obvious problem with Mr. Olsen’s approach is that it does not make any sense whatsoever with respect to the named plaintiff, Ms. Luquetta (or to any other person while their account was being posted according to the WAMU method). Ms. Luquetta never had an account subject to Chase’s high-to-low posting order because her account was closed before the conversion from the WAMU system to the Chase system. It does not make sense to speak about damages or harm to Ms. Luquetta from “Chase’s practice of posting debit card transactions in the order of highest-to-lowest in dollar amount instead of in chronological order” when her account was never subject to “Chase’s practice of posting debit card transactions in the order of highest-to-lowest.” As already noted, the Olsen Declaration does not attempt to show that Ms. Luquetta suffered any damages. If Mr. Olsen attempts to compute damages for Ms. Luquetta, he would generate only results that are meaningless, in economic terms or any other terms relating to the proposed class definition.

62. Putting aside Ms. Luquetta and others similarly situated, and considering Mr. Olsen’s approach only with respect to Chase customers whose accounts were posted in the high-to-low order, Mr. Olsen’s approach fails to address the complexity introduced by the fact that debit card transactions and non-debit card transactions must both be included in the posting order. Put differently, Mr. Olsen’s characterization of the wrongful conduct would make more sense if the posting process were limited to debit card transactions. Instead, the actual posting order begins with credits posted first as a group, followed by fees incurred from the previous day,⁴¹ and then Chase posted all other debit transactions (not limited to debit card transactions)

41. Beginning on November 16, 2009, fees associated with the current day’s activity were posted

as a single group, sorted high to low. This posting order presents two general complications that make Mr. Olsen's approach a distorted and unreliable oversimplification:

- i. Under the challenged Chase system, credits are not sorted in chronological order intermixed with debits. Instead, they are put ahead of all debit transactions, which has the effect of reducing potential OD transactions and fees.
- ii. Debit card transactions are intermixed with ATM, check, ACH and other debit transactions. Many of the non-debit card transactions generally do not carry an authorization time stamp, and therefore Mr. Olsen cannot properly hypothesize sorting all debit transactions chronologically in any meaningful way.

63. To put the matter in plain terms, the Olsen Declaration does not identify any method for sorting debit card transactions and non-debit card transactions (*e.g.*, ATM, checks, ACH) together in a "chronological" order, when checks (and certain debit-card transactions) do not have a date-and-time stamp. Instead, Mr. Olsen presents alternative approaches most of which put all checks/ACH as a group before all debit card transactions as a group, or else puts all checks/ACH as a group after all debit card transactions, for posting purposes. Mr. Olsen does not advance any reason why such a "checks before" approach is any more or less "chronological" than such a "checks after" approach. Nor does he advance any reason why an approach that puts all checks before all debit card transactions (or vice versa) without regard to whether a given check transaction was initiated before or after a given debit card transaction should be deemed to be "chronological" overall. Indeed, Mr. Olsen does not advance any reason why adopting such a non-chronological approach would be considered preferable, in economic terms, for any party, as compared with Chase's high-to-low posting order. Mr. Olsen

(...continued)
on that day, after all other transactions.

acknowledges that a class cannot be ascertained without a proper damages analysis, but then he does not propose a damages analysis. Moreover, as I discuss below each of the damages “scenarios” that Mr. Olsen hypothesizes lacks characteristics required for an economically coherent analysis of damages.

B. An Economically Coherent Damages Analysis Requires A Description Of A “But-For” Scenario That Was Likely To Have Occurred Absent The Alleged Wrongful Conduct

64. Assuming that a damages expert was able to define accurately the alleged wrongful conduct (which Mr. Olsen appears to have been unable to do), the critical element of all damages analyses is a description of an economically feasible and likely “but-for” scenario. The “but-for” scenario must be based on an economically rational and technically feasible (given the technology at the time) alternative for the defendant, in this case Chase, absent the alleged wrongful conduct. What this means in terms of an appropriate economic analysis of damages is the following: The hypothetical “but-for” world should be based on the same market conditions, business incentives, information and technology that underlay the defendant’s actual business decisions, but accept the constraint that the defendant would not have engaged in the alleged wrongful conduct. This means that the damages expert must ask the hypothetical question in this case: What posting order would the bank have adopted (in light of its economic interests, market position, and available technology at the time) as its second-best, permissible approach, if the high-to-low approach it did adopt was deemed impermissible?

65. In this case, the actual authorization and overdraft system employed by Chase since July 2003 was deemed by Chase to be its preferred system. From an economic perspective, the system that the bank chose is assumed to be profit maximizing, given market conditions, and the information and technology available to the bank at that time. However, in the “but-for”

scenario, the actual system that was chosen is assumed to be unlawful, and the economically rational bank is assumed to have an alternative system that it sees as profit maximizing, and not itself unlawful.

66. As I now explain, Mr. Olsen does not provide any economic analysis showing that his proposed scenarios in the *Gutierrez* litigation or this litigation meet the standard of being economically rational and feasible during the time period that the Chase system was chosen (*i.e.*, before July 2003).

C. **Mr. Olsen's Proposed Scenarios Are Not Based On An Economic Analysis Of The Likely State Of The World That Would Have Existed "But For" The Alleged Wrongful Conduct**

67. In this section, I review the various scenarios that Mr. Olsen proposed in the *Gutierrez* litigation in light of the appropriate standards for an economic analysis of damages.

Group 1: Low-to-High (Olsen Scenarios 1 and 1A):

68. This set of scenarios, founded on a lowest-to-highest posting order, minimizes OD fees and maximizes estimated damages. Mr. Olsen has not identified any economic basis for a low-to-high assumption because it would not be economically rational for a bank to choose that posting order. Put differently, in a "but-for" world where the bank is choosing among alternatives other than the high-to-low posting order that constitutes the alleged wrongful conduct, there is no likelihood that the bank would choose a posting order that would result in minimal OD fees because it could make greater profits under an alternative permissible posting order.

Group 2: Debit Card Chronological, followed by Check/ACH Debits High-to-Low (Olsen Scenarios 2, 2A, 3, 3A)

69. Within this group is Scenario 2A, the scenario selected by the Court in the *Gutierrez* litigation for purposes of assessing damages:

Scenario 2A Posting Order:

- a. Credits.
- b. Fees and other non-customer initiated debits.
- c. All customer initiated debit transactions except debit card and checks/ACH debits.
- d. Debit card transactions with time information, chronologically.
- e. Debit card transactions without time information, low-to-high.
- f. Checks and ACH debits, high-to-low.

Scenario 2A is also the scenario most similar to the one that Mr. Olsen puts forth in his declaration in this case as an illustrative example for computing damages for the *Luquetta* case.⁴²

Olsen Illustrative Posting Order Example:

- a. Credits.
- b. Fees and other non-customer initiated debits.
- c. Debit card transactions and ATM transactions with time information, chronologically.
- d. Debit card transactions and ATM transactions without time information, low-to-high.
- e. All other customer initiated debits, including checks and ACH debits (no order specified)

The primary difference between the Olsen illustrative example posting order and Scenario 2A is that ATM debits are posted ahead of debit card transactions in Scenario 2A.⁴³ These scenarios are also similar to Chase's posting order implemented in March 2010.

Chase Post-March 2010 Posting Order:

- a. Credits.
- b. Fees and other non-customer initiated debits.

42. Olsen Declaration, ¶42.

43. Another possible difference is the posting order of check and ACH debits. In Scenario 2A, checks and ACH debits are posted high-to-low. In the Olsen illustrative example, Mr. Olsen neglects to specify the posting order within the group of check and ACH debits.

- c. Debit card transactions, ATM transactions and all other debit transactions with time information, posted chronologically.
- d. All other customer initiated debits, including debit card and ATM transactions without time information⁴⁴ and checks and ACH debits, high-to-low.

70. Mr. Olsen does not argue that the similarity between Scenario 2A and the Olsen illustrative example (on the one hand) and the posting that Chase actually implemented in March 2010 (on the other hand) makes them economically coherent representations of the “but-for” world for the relevant period. In any event, such an argument would be incorrect. Implementation of a particular posting order in March 2010 does not mean that this posting order (or one similar to it) likely would have been implemented in July 2003 – the time that Chase implemented its high-to-low posting order. Chase’s post-March 2010 system, decided upon in September 2009 and implemented after March 2010, meets the requirement that it was economically rational in 2009, but it may not have been economically rational in the 2002-2003 period.

71. The posting approach Chase adopted as of March 29, 2010 posts debit card transactions in chronological order based on authorization, followed by checks and ACH debits. This posting order was chosen by Chase in September 2009 in anticipation of a July 2010 change in Federal Reserve rules (“Reg E”) that prohibited banks from charging OD fees on debit card transactions that had been authorized. Chase also was required to obtain permission from its checking accountholders to pay OD items that would be paid because of Chase’s use of the “matrix,” while standard ODP coverage remained in place. This “opt-in” procedure was put in place for new customers in July 2010 and for existing customers in August 2010. Under these regulations, Chase cannot charge an OD fee when an account owned by an “opt-out” debit

44. Following improvements in technology, virtually all debit transactions other than check and ACH debits currently have time stamps.

cardholder is in OD from a debit card transaction. Chase can, however, charge a fee when a *check* causes an OD. For this reason, it was rational for Chase at that time to adopt a posting order where debit card transactions are posted chronologically before checks. In this way, the bank minimizes its exposure to the kinds of ODs for which it cannot obtain OD fee compensation.

72. In the July 2003 time period, there was no impending loss of the ability to charge OD fees to individuals who opt out of the system. Mr. Olsen does not advance any view that Chase would rationally have chosen a posting order along the lines of its March 29, 2010, approach, if it were required to refrain from posting debit card transactions in high-to-low order; and there is no reason to believe Chase would have done so. On the contrary, Chase likely would have chosen an approach that most closely mimicked its actual July 2003 posting order without creating the liability associated with the alleged wrongful conduct. Such a posting order likely would have included a feature whereby checks and ACH debits (which, among other things, tend to be for larger dollar amounts than debit card transactions) would be posted before debit card transactions.

Group 3: Check/ACH Debits High-to-Low, followed by Debit Card Transactions Chronologically (Olsen Scenarios 2b, 2c, 3b, 3c)

73. Finally, I consider the Group 3 scenarios proposed in the *Gutierrez* litigation. In principle, this group of posting orders could have been selected if the alleged wrongful conduct were not permitted because it would retain the check/ACH posting order as is, but process debit card transactions in chronological order. Furthermore, check/ACH debits posted on a given day were likely to have been initiated before the debit card transactions posted on that day because of the longer time lag in posting checks and ACH debits. However, the Court in the *Gutierrez*

litigation did not choose this posting order and Mr. Olsen has not advanced any view that there was a reasonable likelihood that this scenario would have arisen “but for” the alleged wrongful conduct. Indeed, Mr. Olsen presents no economic analysis whatsoever to offer guidance in the choice of the damages scenario. Instead, he declines to offer an economic damages opinion when he states, “I have applied the same methodology as I used in the *Gutierrez* case in order to calculate the extent of ‘harm’ to each of the named plaintiffs during the time period for which I was provided data. I do not mean to suggest that his is the only or proper damage analysis for the Chase litigation.”⁴⁵ As I show in the next section, Mr. Olsen’s methodology (applied to any of the proposed scenarios) fails the economic standards of an appropriate damages methodology because he fails to account for the implications of changes in the set of transactions that would be authorized by the bank that arise when the posting order is altered.

VI. MR. OLSEN’S DAMAGES METHODOLOGY IS NOT A COHERENT OR CREDIBLE ECONOMIC ANALYSIS BECAUSE IT ARTIFICIALLY ASSUMES THAT THE BANK WOULD HAVE PAID ITEMS ACCORDING TO THE ACTUAL POSTING ORDER WHILE IT LEVIED FEES BASED ON A DIFFERENT POSTING ORDER

74. In this section, I demonstrate that Mr. Olsen’s damages methodology suffers from an additional flaw. It fails to account for changes in transaction authorizations that would have been an inevitable consequence of changes in the posting order. This is a clear error in his methodology and applies to each of his proposed “scenarios” for damages assessment.

75. Each of Mr. Olsen’s scenarios incorporates as an assumption that all transactions that were authorized for payment in the actual world would have been authorized in the “but-for” world. As I demonstrate, this is an incorrect assumption with far-reaching implications for the damages analysis. Correcting the error creates a situation where certain check and ACH debits

45. Olsen Declaration, ¶42.

that were paid by Chase in the actual world would have been deemed NSF in the “but-for” world. Similarly, certain check and ACH debits that were NSF in the actual world would have been paid in the “but-for” world. Mr. Olsen’s methodology fails to account for these simple facts and therefore generates “damages” that have no bearing on the harm that each plaintiff allegedly suffered.

76. Moreover, the determination of damages in a model that accounts for changes in transaction authorization is complicated by the fact that NSF check and ACH transactions create costs on the individual customers that are difficult to measure. In essence, Mr. Olsen has described a potential approach for calculating a claimed “damages” number for each plaintiff, but he has not shown that this calculated number measures the likely damages suffered by each plaintiff. Indeed, Mr. Olsen’s error implies that individual plaintiffs may have suffered “negative” damages in that they are better off in the actual world than they would have been in the proposed “but-for” scenario. As such, the determination of economically appropriate damages would require an individualized analysis.

A. Mr. Olsen’s Damages Analysis Incorrectly Assumes That Changes In The Posting Order Would Have No Effect On The Set Of Transactions Posted In A Given Day

77. Mr. Olsen begins his analysis by examining only days where there are two or more OD fees of any kind (debit card, check, ACH).⁴⁶ This approach treats each of those days in isolation (*i.e.*, the beginning ledger balance in the “but-for” scenario is identical to the actual beginning ledger balance even if there would have been different fees in prior days). Mr. Olsen then re-sequences the posted transactions using one of his damages scenarios and totals the OD

46. The basis for the assumption that damages are limited to days with two or more OD fees stems from Mr. Olsen’s observation that changes in the sort order would only generate a change in the number of OD fees if there are two or more OD fees in a given day.

fees. This generates the “but-for” OD fees. Damages are then calculated as the difference between actual OD fees and “but-for” OD fees, net of reversals and non-collectibles.⁴⁷

78. A simplifying assumption that Mr. Olsen made in the *Gutierrez* litigation was that the set of transactions that were authorized and posted in a given day is assumed to be unaffected by the change in the posting order.⁴⁸ Although Mr. Olsen has not actually produced any class-wide damages analysis in the *Luquetta* litigation, the Olsen Declaration indicates that he would follow the same assumption. Mr. Olsen states, “I have applied the same methodology as I used in the *Gutierrez* case in order to calculate the extent of ‘harm’ to each of the named plaintiffs during the time period for which I was provided data.”⁴⁹ By making this simplifying assumption, Mr. Olsen avoids dealing with the complications caused by differences in the set of transactions that would have been paid. However, this assumption removes any economic meaning from his methodology for determining the appropriate damages.

79. Mr. Olsen’s approach would escape this distorting element of unreliability only if the set of transactions that is paid were identical in both the actual and “but-for” scenarios. That way, the only difference between the two scenarios would be the set of OD fees charged to the customer. The problem is that there are also checks and ACH debits that reduce the customers’ ledger balances. In the actual world, the bank’s determination of whether to pay those transactions depends on the posting order because the posting order determines the ledger balance in effect when each of those transactions is considered for payment versus NSF.

47. Chase argues that the only OD fees eligible for damages are debit card OD fees. For purposes of this analysis, we assume plaintiffs are claiming damages from all OD fees.

48. Transcript of Proceedings in *Gutierrez v. Wells Fargo*, April 30, 2010, p. 939.

49. Olsen Declaration, ¶42.

B. Analysis of Actual Chase Data Generates Numerous Examples of Changes in Paid Transactions When Posting Order Is Changed

80. My analysis of Chase accounts indicates thousands of accounts with transactions where check and ACH debits were paid in the actual world, but would have been designated NSF in the “but-for” scenario. Similarly, there are thousands of accounts with transactions that were determined to be NSF in the actual world, but would have been authorized for payment in the “but-for” scenario. Table 3 shows daily postings for an example that demonstrates this issue.⁵⁰ The example account 1242498898 (a masked account number) had a beginning balance of \$227.83 on November 24, 2009. The accountholder had a daily overdraft limit value (“matrix” value) of \$700. The actual posting order of the transactions is reported in the left panel labeled “Original Chase Posting.” In the actual world the accountholder had three overdrafts, consisting of one ACH debit of \$800.00 and two debit card transactions. The accountholder also had one ACH debit in the amount of \$486.96 that was returned as NSF. As a result, the accountholder incurred \$105.00 in overdraft fees and \$35.00 in NSF fees.

50. See Appendix 3 for 50 additional examples.

Table 3
Consumer Account Examples: Posted Transaction Becomes Not-Posted under Alternative Posting

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Account DIM Number: 124249898, Posting Date: 11/24/2009, Beginning Balance: \$227.83												
The daily OD limit value: \$700.00, the available ODP funds: \$0.00												
Beginning Balance		227.83			Beginning Balance		227.83			Beginning Balance		227.83
ACH Debit	-800.00	-572.17	11/22/09	16:28:00	ATM Purchase	-151.60	76.23	11/22/09	16:28:00	ATM Purchase	-151.60	76.23
ACH Debit	-486.96	-572.17	11/22/09	16:33:28	ATM Purchase	-37.75	38.48	11/22/09	16:33:28	ATM Purchase	-37.75	38.48
ATM Purchase	-151.60	-723.77			ACH Debit	-800.00	-761.52			ACH Debit	-800.00	38.48
ATM Purchase	-37.75	-761.52								ACH Debit	-486.96	-448.48
OD Fees	-105.00	-866.52			OD Fees	-35.00	-796.52			OD Fees	-35.00	-483.48
NSF Fees	-35.00	-901.52			NSF Fees	-35.00	-831.52			NSF Fees	-35.00	-518.48
Not-posted Transactions												
					ACH Debit	-486.96						

Source: JPMorgan Chase Bank, N.A.

Notes: Olsen proposed and alternative postings assume the following order of transactions:

- a. Deposits;
- b. Some fees;
- c. Debit card transactions and ATM withdrawals with time information (chronologically);
- d. Debit card transactions and ATM withdrawals without time information (low-to-high);
- e. Checks and ACH, high to low;
- d. All other transactions.

[1] Olsen proposed posting assumes that posting status does not change under new posting.

[2] Alternative posting assumes that posting status may change under new posting.

81. Olsen’s scenario 2A posting order is reported in the center panel labeled “Olsen Proposed Posting.” As stated above, his methodology assumes that every item that actually was posted would be posted in his hypothetical posting order and, analogously, every item that was

not posted in the real world would not be posted in the hypothetical world. Under his posting order rules, the two debit card purchases are posted first, followed by the \$800.00 ACH debit transaction, and the \$486.96 ACH debit would remain unpaid. However, one can see the account's ledger balance at the end of Olsen's posting order, -\$761.52, exceeds his daily overdraft limit amount of \$700. Therefore the \$800.00 ACH debit should have been an NSF item. The panel on the right labeled "Alternative Posting" corrects Mr. Olsen's error of ignoring items that were not posted in the real world. Here both debit card transactions are paid, as well as the \$486.96 ACH debit, with the \$800.00 ACH debit being returned NSF. The ending account balance remains within the daily overdraft limit amount. Thus an ACH transaction for \$486.96 that was NSF in the actual world would have been paid in the "but-for" world, while an ACH transaction for \$800 that was paid in the actual world would have been NSF in the "but-for" world. As I now explain, determining the correct damages for this accountholder would require an analysis of the costs imposed on the accountholder associated with bounced checks.

C. These Findings Render Mr. Olsen's Methodology Inapplicable To Determining Damages.

82. The examples I have presented show that Mr. Olsen's methodology would fail to account for transactions that would not be authorized for payment in the "but-for" world, but were authorized in the actual world, and vice versa. At the most basic level, Mr. Olsen's analysis would fail to account for fees associated with the additional NSF transactions that occur in the "but-for" world. That, however, is only the beginning of the complications. Importantly, there are additional costs associated with NSF transactions that are difficult to measure and would require an individualized analysis to estimate. For example, merchants often charge the

customer one or more fees when a customer's payment by check is not paid by the bank due to NSF. In addition, the costs associated with the bouncing of a rent or mortgage check may be substantial and difficult to measure (*e.g.*, the impact on the customer's credit score).

D. Some Individuals May Be Better Off Under The Actual Posting Order As Compared With An Alternative Posting Order

83. As the examples in Table 3 illustrate, a simple comparison of OD fees between the actual world and the "but-for" world fails to measure an individual's damages. Indeed, Mr. Olsen over-simplifies the problem by assuming that NSF fees would be identical in the actual and "but-for" worlds. Given that the set of transactions that would be determined NSF can change based on the posting order, a damages methodology must account for the changes in those fees and the costs associated with bounced checks. The problem, however, is further complicated when one considers the days where the accountholder had one or fewer OD fees (the days that Mr. Olsen ignores in his analysis). Under the alternative posting order, there would be checks and ACH transactions on those days that were honored in the actual world, but deemed NSF in the "but-for" world.⁵¹ An economically coherent and credible damages analysis would need to account for those offsetting costs.

84. Once an accounting is made of the additional (and hard to measure) costs associated with NSF check and ACH transactions, it is likely that some plaintiffs would prefer the actual posting order in the July 2003-March 2010 period to one of Mr. Olsen's proposed

51. This analysis would apply to non-class members as well who by definition were not harmed by the alleged wrongful conduct, but would incur additional costs due to NSF transactions under any alternative posting order.

alternatives.⁵² Accordingly, an appropriate damages methodology would require an individualized analysis to determine whether there would be conflicts in the proposed class where individual class members actually benefited from the alleged wrongful conduct.

E. Chase's Actual Experience With Changes In Posting Order Indicates That, Contrary To Mr. Olsen's Assumption, Estimation Of Changes In OD Fees Is Not Mechanistic

85. Mr. Olsen's damages "scenarios" are founded on an assumption that the calculation of damages in this case is a mechanistic exercise -- that damages can be calculated by just taking existing transactions that were posted on a given day and re-sequencing them without any concern for the realistic complicated implications of the re-sequencing. If Mr. Olsen were correct, then one would expect that Chase would have been able similarly to predict the changes in OD fees that would result from actual changes in the posting order that occurred in the normal course of business. In fact, such predictions are very difficult and often inaccurate because changes in the posting order create changes in the set of authorized transactions and likely changes in consumer behavior. In this section, I examine evidence that Mr. Olsen's proposed scenarios would lead to conclusions that are inconsistent with real world experience, which is a further demonstration of the invalidity of the proposed scenarios.

86. Overdraft fees are caused by the customer behavior of overdrawing accounts. Mr. Olsen's scenarios do not take into account, in any manner, whether adopting a particular posting order influences customer behavior in a way that leads to fewer or more overdrafts. To the

52. Furthermore, there are likely a substantial number of individuals who may or may not be class members who would prefer the existing posting order to one of Mr. Olsen's.

contrary, Mr. Olsen's scenarios are each designed specifically to *exclude* any effect that the choice of posting orders may have on customer behavior: each has built into it the specific assumption that all customers would engage in precisely the same set of transactions regardless of whether their transactions are posting on a high-to-low basis or some other basis, and regardless of what fee implications the posting order may have. Because the scenarios specifically exclude any effect of posting order on customer behavior, each scenario is defective in its unreliability as a method to determine whether, to use plaintiff's own class definition, a customer "incurred one or more overdraft fees as a result of Chase's practice of sequencing debt card transactions from highest to lowest."⁵³

87. In September 2008, Chase acquired the checking account business of WAMU from the FDIC. In preparation for the transition of WAMU accounts to Chase's system, Chase attempted to predict the impact on OD fees of a change from the WAMU posting order to the Chase posting order. Based on a type of analysis similar to Mr. Olsen's scenarios – *i.e.*, a mechanistic calculation of the extent to which fee levels would change if customer behavior did not change and the same historical transactions were simply posted in different order – they predicted that fees would in theory increase by approximately 19 percent.⁵⁴

88. In January 2010, Chase conducted a second study that attempted to quantify the *actual* change in OD/NSF fees incurred by former WAMU customers. In particular, they calculated the total amount of OD/NSF fees WAMU customers received in December 2009 under the Chase posting order and in December 2008 under the WAMU posting order. For the

53. Class Motion, p. 1.

54. "Retail Marketing, High to Low Posting Analysis, 'Reposting' WaMu Transactions Using the Chase Posting Process,' July 2009.

set of accounts that were open during both periods, Chase found that the OD/NSF fees actually decreased by 16 percent.⁵⁵ To some extent, the difference between the predicted change using a mechanistic calculation (+19%) and the actual observed change in the real world (-16%) could be explained by the fact that Chase and WAMU had different per-item fees, and different fee ceilings, but I understand that Chase believes that these were relatively small considerations that did not explain the large directional difference between the mechanistic theoretical prediction and the actual results.

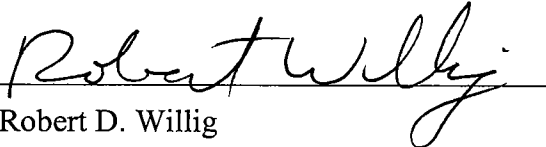
89. This WAMU-to-Chase difference indicates that customer behavioral considerations are important factors and that a mechanistic re-calculation approach that is hard-wired to ignore behavioral considerations is on its face unreliably incomplete as a method of assessing damages in this context.

VII. CONCLUSION

90. Mr. Olsen's proposed damages methodology generates arbitrary measures of damages. However, he has not provided an economic analysis that would show that his methodology provides a reasonably accurate measure of individual or even aggregate damages. Estimating the correct damages at the individual and aggregate levels requires determination of an economically coherent "but-for" scenario and consideration of the implications of that scenario on an individual's OD fees, reversals and likelihood of non-collection. Such a determination requires an individualized analysis.


55. WaMu Exception Review, January 20, 2010.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 15,
2011, Chicago, IL.


Robert D. Willig

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 16, 2011, I filed the foregoing document under seal with the Clerk of the Court. I also certify that the foregoing document is being served this day, via Federal Express, on Robert C. Gilbert, Grossman Roth, P.A., 2525 Ponce de Leon Boulevard, Eleventh Floor, Coral Gables, Florida, 33134.



Peter W. Homer

APPENDIX 1

December 2010

Curriculum Vitae

Name: Robert D. Willig

Address: 220 Ridgeview Road, Princeton, New Jersey 08540

Birth: 1/16/47; Brooklyn, New York

Marital Status: Married, four children

Education: Ph.D. Economics, Stanford University, 1973
Dissertation: Welfare Analysis of Policies
Affecting Prices and Products.
Advisor: James Rosse

M.S. Operations Research, Stanford University, 1968.

A.B. Mathematics, Harvard University, 1967.

Professional Positions:

Professor of Economics and Public Affairs, Princeton University, 1978-.

Principal External Advisor, Infrastructure Program, Inter-American Development Bank, 6/97-8/98.

Deputy Assistant Attorney General, U.S. Department of Justice, 1989-1991.

Supervisor, Economics Research Department, Bell Laboratories, 1977-1978.

Visiting Lecturer (with rank of Associate Professor), Department of Economics and Woodrow Wilson School, Princeton University, 1977-78 (part time).

Economics Research Department, Bell Laboratories, 1973-77.

Lecturer, Economics Department, Stanford University, 1971-73.

Other Professional Activities:

ABA Section of Antitrust Law Economics Task Force, 2010-2011

Advisory Committee, Compass Lexecon 2010 -,

OECD Advisory Council for Mexican Economic Reform, 2008 -2009,

Senior Consultant, Compass Lexecon, 2008 -,

Director, Competition Policy Associates, Inc., 2003-2005

Advisory Board, Electronic Journal of Industrial Organization and Regulation Abstracts, 1996-.

Advisory Board, Journal of Network Industries, 2004-.

Visiting Faculty Member (occasional), International Program on Privatization and Regulatory Reform, Harvard Institute for International Development, 1996-2000.

Member, National Research Council Highway Cost Allocation Study Review Committee, 1995-98.

Member, Defense Science Board Task Force on the Antitrust Aspects of Defense Industry Consolidation, 1993-94.

Editorial Board, Utilities Policy, 1990-2001

Leif Johanson Lecturer, University of Oslo, November 1988.

Member, New Jersey Governor's Task Force on Market-Based Pricing of Electricity, 1987-89.

Co-editor, Handbook of Industrial Organization, 1984-89.

Associate Editor, Journal of Industrial Economics, 1984-89.

Director, Consultants in Industry Economics, Inc., 1983-89, 1991-94.

Fellow, Econometric Society, 1981-.

Organizing Committee, Carnegie-Mellon-N.S.F. Conference on Regulation, 1985.

Board of Editors, American Economic Review, 1980-83.

Nominating Committee, American Economic Association, 1980-1981.

Research Advisory Committee, American Enterprise Institute, 1980-1986.

Editorial Board, M.I.T. Press Series on Government Regulation of Economic Activity, 1979-93.

Program Committee, 1980 World Congress of the Econometric Society.

Program Committee, Econometric Society, 1979, 1981, 1985.

Organizer, American Economic Association Meetings: 1980, 1982.

American Bar Association Section 7 Clayton Act Committee, 1981.

Principal Investigator, NSF grant SOC79-0327, 1979-80; NSF grant 285-6041, 1980-82; NSF grant SES-8038866, 1983-84, 1985-86.

Aspen Task Force on the Future of the Postal Service, 1978-80.

Organizing Committee of Sixth Annual Telecommunications Policy Research Conference, 1977-78.

Visiting Fellow, University of Warwick, July 1977.

Institute for Mathematical Studies in the Social Sciences, Stanford University, 1975.

Published Articles and Book Chapters:

“The 1982 Department of Justice Merger Guidelines: An Economic Assessment,” (with J. Ordoover) reprinted in Economics of Antitrust Law, Benjamin Klein (ed.), Edward Elgar, 2008.

“Antitrust and Patent Settlements: The Pharmaceutical Cases,” (with John Bigelow) in The Antitrust Revolution (Fifth Edition), John Kwoka and Lawrence White (eds.), 2008.

“On the Antitrust Treatment of Production Joint Ventures,” (with Carl Shapiro) reprinted in Economics of Antitrust Law, Benjamin Klein (ed.), Edward Elgar, 2008.

“Consumer’s Surplus Without Apology,” reprinted in Applied Welfare Economics, Richard Just, Darrel Hueth and Andrew Schmitz (eds.), Edward Elgar, 2008; reprinted in Readings in Social Welfare: Theory and Policy, Robert E. Kuenne (ed.), Blackwell, 2000, pp. 86-97; reprinted in Readings in Microeconomic Theory, M. M. La Manna (ed.), Dryden Press, 1997, pp. 201-212.

“The Risk of Contagion from Multi-Market Contact,” (with Charles Thomas), The International Journal of Industrial Organization, Vol. 24, Issue 6 (Nov. 2006), pp 1157 – 1184.

“Pareto-Superior Nonlinear Outlay Schedules,” reprinted in The Economics of Public Utilities, Ray Rees (ed.), Edward Elgar, 2006; reprinted in The Economics of Price Discrimination, G. Norman, (ed.), Edward Elgar, 1999.

“Economic Effects of Antidumping Policy,” reprinted in The WTO and Anti-Dumping, Douglas Nelson (ed.), Edward Elgar, 2005.

“Merger Analysis, Industrial Organization Theory and the Merger Guidelines,” reprinted in Antitrust and Competition Policy, Andrew Kleit (ed.) Edward Elgar, 2005

“Antitrust Policy Towards Agreements That Settle Patent Litigation,” (with John Bigelow), Antitrust Bulletin, Fall 2004, pp. 655-698.

“Economies of Scope,” (with John Panzar), reprinted in The Economics of Business Strategy, John Kay (ed.), Edward Elgar, 2003.

“Panel on Substantive Standards for Mergers and the Role of Efficiencies,” in International Antitrust Law & Policy, Barry E. Hawk (ed.), Juris Publishing, 2003.

“Practical Rules for Pricing Access in Telecommunications,” (with J. Ordover) in Second Generation Reforms in Infrastructure Services, F. Basanes and R. Willig (eds.), Johns Hopkins Press, 2002.

“Comments on Antitrust Policy in the Clinton Administration,” in American Economic Policy in the 1990s, J. Frankel and P. Orszag (eds.), MIT Press, 2002.

“Entrepreneurship, Access Policy and Economic Development: Lessons from Industrial Organization,” (with M. Dutz and J. Ordover), European Economic Review, (44)4-6 (2000), pp. 739-747.

"Public Versus Regulated Private Enterprise," reprinted in Privatization in Developing Countries, P. Cook and C. Kirkpatrick (eds.), Edward Elgar, 2000.

“Deregulation v. the Legal Culture: Panel Discussion,” in Is the Telecommunications Act of 1996 Broken?, G. Sidak (ed.), AEI Press, 1999.

“Economic Principles to Guide Post-Privatization Governance,” in Can Privatization Deliver? Infrastructure for Latin America, R. Willig co-editor, Johns Hopkins Press, 1999.

“Access and Bundling in High-Technology Markets,” (with J. A. Ordover), in Competition, Innovation and the Microsoft Monopoly: Antitrust in the Digital Marketplace, J. A. Eisenach and T. Lenard (eds.), Kluwer, 1999.

“Competitive Rail Regulation Rules: Should Price Ceilings Constrain Final Products or Inputs?,” (With W. J. Baumol), Journal of Transport Economics and Policy, Vol. 33, Part 1, pp. 1-11.

“Economic Effects of Antidumping Policy,” Brookings Trade Forum: 1998, 19-41.

“Interview With Economist Robert D. Willig,” Antitrust, Vol. 11, No. 2, Spring 1997, pp.11-15.

“Parity Pricing and its Critics: A Necessary Condition for Efficiency in Provision of Bottleneck Services to Competitors,” (with W. J. Baumol and J. A. Ordover), Yale Journal on Regulation, Vol. 14, No. 1, Winter 1997, pp. 145-164.

“Restructuring Regulation of the Rail Industry,” (with Ioannis Kessides), in Private Sector, Quarterly No. 4, September 1995, pp. 5 - 8. Reprinted in Viewpoint, October, 1995, The World Bank. Reprinted in Private Sector, special edition: Infrastructure, June 1996.

“Competition and Regulation in the Railroad Industry,” (with Ioannis Kessides), in Regulatory Policies and Reform: A Comparative Perspective, C. Frischtak (ed.), World Bank, 1996.

"Economic Rationales for the Scope of Privatization," (with Carl Shapiro), reprinted in The Political Economy of Privatization and Deregulation, E. E. Bailey and J. R. Pack (eds.), The International Library of Critical Writings in Economics, Edward Elgar Publishing Co., 1995, pp. 95-130.

"Weak Invisible Hand Theorems on the Sustainability of Multi-product Natural Monopoly," (with W. Baumol and E. Bailey), reprinted in The Political Economy of Privatization and Deregulation, E. E. Bailey and J. R. Pack (eds.), The International Library of Critical Writings in Economics, Edward Elgar Publishing Co., 1995, pp. 245-260.

“Economists’ View: The Department of Justice Draft Guidelines for the Licensing and Acquisition of Intellectual Property,” (with J. Ordover), Antitrust, V. 9, No. 2 (spring 1995), 29-36.

"Public Versus Regulated Private Enterprise," in Proceedings of the World Bank Annual Conference on Development Economics 1993, L. Summers (ed.), The World Bank, 1994.

"Economics and the 1992 Merger Guidelines: A Brief Survey," (with J. Ordover), Review of Industrial Organization, V. 8, No. 2, (1993), pp. 139-150.

"The Role of Sunk Costs in the 1992 Guidelines' Entry Analysis," Antitrust, V. 6, No. 3 (summer 1992).

"Antitrust Lessons from the Airlines Industry: The DOJ Experience," Antitrust Law Journal, V. 60, No. 2 (1992).

"William J. Baumol," (with E. E. Bailey), in New Horizons in Economic Thought: Appraisals of Leading Economists, W. J. Samuels (ed.), Edward Elgar, 1992.

"Anti-Monopoly Policies and Institutions," in The Emergence of Market Economies in Eastern Europe, Christopher Clague and Gordon Rausser (eds.), Basil Blackwell, 1992.

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"On the Antitrust Treatment of Production Joint Ventures," (with Carl Shapiro), reprinted in Collaborations Among Competitors: Antitrust Policy and Economics, Eleanor Fox and James Halverson (eds.), American Bar Association, 1992.

"Merger Analysis, Industrial Organization Theory, and Merger Guidelines," Brookings Papers on Economic Activity -- Microeconomics 1991, pp. 281-332.

"On the Antitrust Treatment of Production Joint Ventures," (with C. Shapiro), Journal of Economic Perspectives, Vol. 4, No. 3, Summer 1990, pp. 113-130.

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"Contestable Market Theory and Regulatory Reform," in Telecommunications Deregulation: Market Power and Cost Allocation, J.R. Allison and D.L. Thomas (eds.), Ballinger, 1990.

"Address To The Section," Antitrust Law Section Symposium, New York State Bar Association, 1990.

"Price Caps: A Rational Means to Protect Telecommunications Consumers and Competition," (with W. Baumol), Review of Business, Vol. 10, No. 4, Spring 1989, pp. 3-8.

"U.S.-Japanese VER: A Case Study from a Competition Policy Perspective," (with M. Dutz) in The Costs of Restricting Imports, The Automobile Industry. OECD, 1988.

"Contestable Markets," in The New Palgrave: A Dictionary of Economics, J. Eatwell, M. Milgate, and P. Newman (eds.), 1987.

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"Railroad Deregulation: Using Competition as a Guide," (with W. Baumol), Regulation, January/February 1987, Vol. 11, No. 1, pp. 28-36.

"How Arbitrary is 'Arbitrary'? - or, Toward the Deserved Demise of Full Cost Allocation," (with W. Baumol and M. Koehn), Public Utilities Fortnightly, September 1987, Vol. 120, No. 5, pp. 16-22.

"Contestability: Developments Since the Book," (with W. Baumol), Oxford Economic Papers, December 1986, pp. 9-36.

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"Perspectives on Mergers and World Competition," (with J. Ordovery), in Antitrust and Regulation, R.E. Grieson (ed.), Lexington, 1986.

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"Antitrust for High-Technology Industries: Assessing Research Joint Ventures and Mergers," (with J. Ordovery), Journal of Law and Economics, Vol 28(2), May 1985, pp. 311-334.

"Non-Price Anticompetitive Behavior by Dominant Firms Toward the Producers of Complementary Products," (with J. Ordovery and A. Sykes), in Antitrust and Regulation, F.M. Fisher (ed.), MIT Press, 1985.

"Telephones and Computers: The Costs of Artificial Separation," (with W. Baumol), Regulation, March/April 1985.

"Transfer Principles in Income Redistribution," (with P. Fishburn), Journal of Public Economics, 25 (1984), pp. 1-6.

"Market Structure and Government Intervention in Access Markets," in Telecommunications Access and Public Policy, A. Baughcam and G. Faulhaber (eds.), 1984.

"Pricing Issues in the Deregulation of Railroad Rates," (with W. Baumol), in Economic Analysis of Regulated Markets: European and U. S. Perspectives, J. Finsinger (ed.), 1983.

"Local Telephone Pricing in a Competitive Environment," (with J. Ordover), in Telecommunications Regulation Today and Tomorrow, E. Noam (ed.), Harcourt Brace Jovanovich, 1983.

"Economics and Postal Pricing Policy," (with B. Owen), in The Future of the Postal Service, J. Fleishman (ed.), Praeger, 1983.

"Selected Aspects of the Welfare Economics of Postal Pricing," in Telecommunications Policy Annual, Praeger, 1987.

"The Case for Freeing AT&T" (with M. Katz), Regulation, July-Aug. 1983, pp. 43-52.

"Predatory Systems Rivalry: A Reply" (with J. Ordover and A. Sykes), Columbia Law Review, Vol. 83, June 1983, pp. 1150-1166. Reprinted in Corporate Counsel's Handbook - 1984.

"Sector Differentiated Capital Taxation with Imperfect Competition and Interindustry Flows," Journal of Public Economics, Vol. 21, 1983.

"Contestable Markets: An Uprising in the Theory of Industry Structure: Reply," (with W.J. Baumol and J.C. Panzar), American Economic Review, Vol. 73, No. 3, June 1983, pp. 491-496.

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"Intertemporal Failures of the Invisible Hand: Theory and Implications for International Market Dominance," (with W.J. Baumol), Indian Economic Review, Vol. XVI, Nos. 1 and 2, January-June 1981, pp. 1-12.

"Unfair International Trade Practices," (with J. Ordover and A. Sykes), Journal of International Law and Politics, Vol. 15, No. 2, winter 1983, pp. 323-337.

"Journals as Shared Goods: Reply," (with J. Ordover), American Economic Review, V. 72, No. 3, June 1982, pp. 603-607.

"Herfindahl Concentration, Rivalry, and Mergers," (with J. Ordover and A. Sykes), Harvard Law Review, V. 95, No. 8, June 1982, pp. 1857-1875.

"An Economic Definition of Predation: Pricing and Product Innovation," (with J. Ordover), Yale Law Journal, Vol. 90: 473, December 1981, pp. 1-44.

"Fixed Costs, Sunk Costs, Entry Barriers, and the Sustainability of Monopoly," (with W. Baumol), Quarterly Journal of Economics, Vol. 96, No. 3, August 1981, pp. 405-432.

"Social Welfare Dominance," American Economic Review, Vol. 71, No. 2, May 1981, pp. 200-204.

"Economies of Scope," (with J. Panzar), American Economic Review, Vol. 72, No. 2, May 1981, pp. 268-272.

"Income-Distribution Concerns in Regulatory Policymaking," (with E.E. Bailey) in Studies in Public Regulation (G. Fromm, ed.), MIT Press, Cambridge, 1981, pp. 79-118.

"An Economic Definition of Predatory Product Innovation," (with J. Ordover), in Strategic Predation and Antitrust Analysis, S. Salop (ed.), 1981.

"What Can Markets Control?" in Perspectives on Postal Service Issues, R. Sherman (ed.), American Enterprise Institute, 1980.

"Pricing Decisions and the Regulatory Process," in Proceedings of the 1979 Rate Symposium on Problems of Regulated Industries, University of Missouri-Columbia Extension Publications, 1980, pp. 379-388.

"The Theory of Network Access Pricing," in Issues in Public Utility Regulation, H.M. Trebing (ed.), MSU Public Utilities Papers, 1979.

"Customer Equity and Local Measured Service," in Perspectives on Local Measured Service, J. Baude, etal. (ed.), 1979, pp. 71-80.

"The Role of Information in Designing Social Policy Towards Externalities," (with J. Ordover), Journal of Public Economics, V. 12, 1979, pp. 271-299.

"Economies of Scale and the Profitability of Marginal-Cost Pricing: Reply," (with J. Panzar), Quarterly Journal of Economics, Vol. 93, No. 4, November 1979, pp. 743-4.

"Theoretical Determinants of the Industrial Demand for Electricity by Time of Day," (with J. Panzar) Journal of Econometrics, V. 9, 1979, pp. 193-207.

"Industry Performance Gradient Indexes," (with R. Dansby), American Economic Review, V. 69, No. 3, June 1979, pp. 249-260.

"The Economic Gradient Method," (with E. Bailey), American Economic Review, Vol. 69, No. 2, May 1979, pp. 96-101.

"Multiproduct Technology and Market Structure," American Economic Review, Vol. 69, No. 2, May 1979, pp. 346-351.

"Consumer's Surplus Without Apology: Reply," American Economic Review, Vol. 69, No. 3, June 1979, pp. 469-474.

"Decisions with Estimation Uncertainty," (with R. Klein, D. Sibley, and L. Rafsky), Econometrica, V. 46, No. 6, November 1978, pp. 1363-1388.

"Incremental Consumer's Surplus and Hedonic Price Adjustment," Journal of Economic Theory, V. 17, No. 2, April 1978, pp. 227-253.

"Recent Theoretical Developments in Financial Theory: Discussion," The Journal of Finance, V. 33, No. 3, June 1978, pp. 792-794.

"The Optimal Provision of Journals Qua Sometimes Shared Goods," (with J. Ordoover), American Economic Review, V. 68, No. 3, June 1978, pp. 324-338.

"On the Comparative Statics of a Competitive Industry With Infra-marginal Firms," (with J. Panzar), American Economic Review, V. 68, No. 3, June 1978, pp. 474-478.

"Pareto Superior Nonlinear Outlay Schedules," Bell Journal of Economics, Vol. 9, No. 1, Spring 1978, pp. 56-69.

"Predatoriness and Discriminatory Pricing," in The Economics of Anti-Trust: Course of Study Materials, American Law Institute-American Bar Association, 1978.

"Economies of Scale in Multi-Output Production," (with J. Panzar), Quarterly Journal of Economics, V. 91, No. 3, August 1977, pp. 481-494.

"Weak Invisible Hand Theorems on the Sustainability of Multi-product Natural Monopoly," (with W. Baumol and E. Bailey), American Economic Review, V. 67, No. 3, June 1977, pp. 350-365.

"Free Entry and the Sustainability of Natural Monopoly," (with J. Panzar), Bell Journal of Economics, Spring 1977, pp. 1-22.

"Risk Invariance and Ordinally Additive Utility Functions," Econometrica, V. 45, No. 3, April 1977, pp. 621-640.

"Ramsey-Optimal Pricing of Long Distance Telephone Services," (with E. Bailey), in Pricing in Regulated Industries, Theory and Application, J. Wenders (ed.), Mountain State Telephone and Telegraph Co., 1977, pp. 68-97.

"Network Externalities and Optimal Telecommunications Pricing: A Preliminary Sketch," (with R. Klein), in Proceedings of Fifth Annual Telecommunications Policy Research Conference, Volume II, NTIS, 1977, pp. 475-505.

"Otsenka ekonomicheskoi effektivnosti proizvodstvennoi informatsii" ["The Evaluation of the Economic Benefits of Productive Information"] in Doklady Sovetskikh i Amerikanskikh Spetsialistov Predstavlennye na Pervyi Sovetsko-Amerikanskii Simpozium po Ekonomicheskoi Effektivnosti Informat sionnogo Obsluzhivaniia [Papers of Soviet and American Specialists Presented at the First Soviet- American Symposium on Costs and Benefits of Information Services], All Soviet Scientific Technical Information Center, Moscow, 1976.

"Vindication of a 'Common Mistake' in Welfare Economics," (with J. Panzar), Journal of Political Economy, V. 84, No. 6, December 1976, pp. 1361-1364.

"Consumer's Surplus Without Apology," American Economic Review, V. 66, No. 4, September 1976, pp. 589-597.

Books

Second Generation Reforms in Infrastructure Services, F. Basanes and R. Willig (eds.), Johns Hopkins Press, 2002.

Can Privatization Deliver? Infrastructure for Latin America, R. Willig co-editor, Johns Hopkins Press, 1999.

Handbook of Industrial Organization, (edited with R. Schmalensee), North Holland Press, Volumes 1 and 2, 1989.

Contestable Markets and the Theory of Industry Structure, (with W.J. Baumol and J.C. Panzar), Harcourt Brace Jovanovich, 1982. Second Edition, 1989.

Welfare Analysis of Policies Affecting Prices and Products, Garland Press, 1980.

Unpublished Papers and Reports:

"Public Comments on the 2010 Draft Horizontal Merger Guidelines," paper posted to Federal Trade Commission website, 6/4/2010

"The Consumer Benefits from Broadband Connectivity to U.S. Households," (with Mark Dutz and Jon Orszag), 10/1/09, submitted for publication.

"An Econometric Analysis of the Matching Between Football Student-Athletes and Colleges," (with Yair Eilat, Bryan Keating and Jon Orszag), 8/31/08, submitted for publication.

Supreme Court Amicus Brief Regarding Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington, (co-authored), AEI-Brookings Joint Center Brief No. 07-02, 12/2/07

“(Allegedly) Monopolizing Tying Via Product Innovation,” statement before the Department of Justice/Federal Trade Commission Section 2 Hearings, November 1, 2006.

“Assessment of U.S. Merger Enforcement Policy,” statement before the Antitrust Modernization Commission, 11/17/05.

“Investment is Appropriately Stimulated by TELRIC,” in Pricing Based on Economic Cost, 12/2003.

“Brief of Amici Curiae Economics Professors, re Verizon v. Trinko, In the Supreme Court of the U.S.,” (with W.J. Baumol, J.O. Ordover and F.R. Warren-Boulton), 7/25/2003.

“Stimulating Investment and the Telecommunications Act of 1996,” (with J. Bigelow, W. Lehr and S. Levinson), 2002.

“An Economic Analysis of Spectrum Allocation and Advanced Wireless Services,” (with Martin N. Baily, Peter R. Orszag, and Jonathan M. Orszag), 2002

“Effective Deregulation of Residential Electric Service,” 2001

“Anticompetitive Forced Rail Access,” (with W. J. Baumol), 2000

“The Scope of Competition in Telecommunications” (with B. Douglas Bernheim), 1998

“Why Do Christie and Schultz Infer Collusion From Their Data? (with Alan Kleidon), 1995.

"Demonopolization," (with Sally Van Siclen), OECD Vienna Seminar Paper, 1993.

"Economic Analysis of Section 337: The Balance Between Intellectual Property Protection and Protectionism," (with J. Ordover) 1990.

"The Effects of Capped NTS Charges on Long Distance Competition," (with M. Katz).

"Discussion of Regulatory Mechanism Design in the Presence of Research Innovation, and Spillover Effects," 1987.

"Industry Economic Analysis in the Legal Arena," 1987.

"Deregulation of Long Distance Telephone Services: A Public Interest Assessment," (with M. Katz).

"Competition-Related Trade Issues," report prepared for OECD.

"Herfindahl Concentration Index," (with J. Ordoover), Memorandum for ABA Section 7 Clayton Act Committee, Project on Revising the Merger Guidelines, March 1981.

"Market Power and Market Definition," (with J. Ordoover), Memorandum for ABA Section 7 Clayton Act Committee, Project on Revising the Merger Guidelines, May 1981.

"The Continuing Need for and National Benefits Derived from the REA Telephone Loan Programs - An Economic Assessment," 1981.

"The Economics of Equipment Leasing: Costing and Pricing," 1980.

"Rail Deregulation and the Financial Problems of the U.S. Railroad Industry," (with W.J. Baumol), report prepared under contract to Conrail, 1979.

"Price Indexes and Intertemporal Welfare," Bell Laboratories Economics Discussion Paper, 1974.

"Consumer's Surplus: A Rigorous Cookbook," Technical Report #98, Economics Series, I.M.S.S.S., Stanford University, 1973.

"An Economic-Demographic Model of the Housing Sector," (with B. Hickman and M. Hinz), Center for Research in Economic Growth, Stanford University, 1973.

Invited Conference Presentations:

NYU School of Law Conference on Critical Directions in Antitrust	
"Unilateral Competitive Effects"	2010
Conf. on the State of European Competition Law and Enforcement in a Transatlantic Context	
"Recent Developments in Merger Control"	2010
Center on Regulation and Competition, Universidad de Chile Law School	
"Economic Regulation and the Limits of Antitrust Law"	2010
Center on Regulation and Competition, Universidad de Chile Law School	
"Merger Policy and Guidelines Revision"	2010
Faculty of Economics, Universidad de Chile	
"Network Effects in Airlines Markets"	2010
Georgetown Law Global Antitrust Enforcement Symposium	
"New US Merger Guidelines"	2010

FTI London Financial Services Conference "Competition and Regulatory Reform"	2010
NY State Bar Association Annual Antitrust Conference "New Media Competition Policy"	2009
Antitrust Law Spring Meeting of the ABA "Antitrust and the Failing Economy Defense"	2009
Georgetown Law Global Antitrust Enforcement Symposium "Mergers: New Enforcement Attitudes in a Time of Economic Challenge"	2009
Phoenix Center US Telecoms Symposium "Assessment of Competition in the Wireless Industry"	2009
FTC and DOJ Horizontal Merger Guidelines Workshop "Direct Evidence is No Magic Bullet"	2009
Northwestern Law Research Symposium: Antitrust Economics and Competition Policy "Discussion of Antitrust Evaluation of Horizontal Mergers"	2008
Inside Counsel Super-Conference "Navigating Mixed Signals under Section 2 of the Sherman Act"	2008
Federal Trade Commission Workshop on Unilateral Effects in Mergers "Best Evidence and Market Definition"	2008
European Policy Forum, Rules for Growth: Telecommunications Regulatory Reform "What Kind of Regulation For Business Services?"	2007
Japanese Competition Policy Research Center, Symposium on M&A and Competition Policy "Merger Policy Going Forward With Economics and the Economy"	2007
Federal Trade Commission and Department of Justice Section 2 Hearings "Section 2 Policy and Economic Analytic Methodologies"	2007
Pennsylvania Bar Institute, Antitrust Law Committee CLE "The Economics of Resale Price Maintenance and Class Certification"	2007
Pennsylvania Bar Institute, Antitrust Law Committee CLE "Antitrust Class Certification – An Economist’s Perspective"	2007

Fordham Competition Law Institute, International Competition Economics Training Seminar “Monopolization and Abuse of Dominance”	2007
Canadian Bar Association Annual Fall Conference on Competition Law “Economic Tools for the Competition Lawyer”	2007
Conference on Managing Litigation and Business Risk in Multi-jurisdiction Antitrust Matters “Economic Analysis in Multi-jurisdictional Merger Control”	2007
World Bank Conference on Structuring Regulatory Frameworks for Dynamic and Competitive South Eastern European Markets “The Roles of Government Regulation in a Dynamic Economy”	2006
Department of Justice/Federal Trade Commission Section 2 Hearings “(Allegedly) Monopolizing Tying Via Product Innovation”	2006
Fordham Competition Law Institute, Competition Law Seminar “Monopolization and Abuse of Dominance”	2006
Practicing Law Institute on Intellectual Property Antitrust “Relevant Markets for Intellectual Property Antitrust”	2006
PLI Annual Antitrust Law Institute “Cutting Edge Issues in Economics”	2006
World Bank’s Knowledge Economy Forum V “Innovation, Growth and Competition”	2006
Charles University Seminar Series “The Dangers of Over-Ambitious Antitrust Regulation”	2006
NY State Bar Association Antitrust Law Section Annual Meeting “Efficient Integration or Illegal Monopolization?”	2006
World Bank Seminar “The Dangers of Over-Ambitious Regulation”	2005
ABA Section of Antitrust Law 2005 Fall Forum “Is There a Gap Between the Guidelines and Agency Practice?”	2005
Hearing of Antitrust Modernization Commission “Assessment of U.S. Merger Enforcement Policy”	2005
LEAR Conference on Advances in the Economics of Competition Law “Exclusionary Pricing Practices”	2005

Annual Antitrust Law Institute “Cutting Edge Issues in Economics”	2005
PRIOR Symposium on States and Stem Cells “Assessing the Economics of State Stem Cell Programs”	2005
ABA Section of Antitrust Law – AALS Scholars Showcase “Distinguishing Anticompetitive Conduct”	2005
Allied Social Science Associations National Convention “Antitrust in the New Economy”	2005
ABA Section of Antitrust Law 2004 Fall Forum “Advances in Economic Analysis of Antitrust”	2004
Phoenix Center State Regulator Retreat “Regulatory Policy for the Telecommunications Revolution”	2004
OECD Competition Committee “Use of Economic Evidence in Merger Control”	2004
Justice Department/Federal Trade Commission Joint Workshop “Merger Enforcement”	2004
Phoenix Center Annual U.S. Telecoms Symposium “Incumbent Market Power”	2003
Center for Economic Policy Studies Symposium on Troubled Industries “What Role for Government in Telecommunications?”	2003
Princeton Workshop on Price Risk and the Future of the Electric Markets “The Structure of the Electricity Markets”	2003
2003 Antitrust Conference “International Competition Policy and Trade Policy”	2003
International Industrial Organization Conference “Intellectual Property System Reform”	2003
ABA Section of Antitrust Law 2002 Fall Forum “Competition, Regulation and Pharmaceuticals”	2002
Fordham Conference on International Antitrust Law and Policy “Substantive Standards for Mergers and the Role of Efficiencies”	2002

Department of Justice Telecom Workshop “Stimulating Investment and the Telecommunications Act of 1996”	2002
Department of Commerce Conference on the State of the Telecom Sector “Stimulating Investment and the Telecommunications Act of 1996”	2002
Law and Public Affairs Conference on the Future of Internet Regulation “Open Access and Competition Policy Principles”	2002
Center for Economic Policy Studies Symposium on Energy Policy “The Future of Power Supply”	2002
The Conference Board: Antitrust Issues in Today’s Economy “The 1982 Merger Guidelines at 20”	2002
Federal Energy Regulatory Commission Workshop “Effective Deregulation of Residential Electric Service”	2001
IPEA International Seminar on Regulation and Competition “Electricity Markets: Deregulation of Residential Service” “Lessons for Brazil from Abroad”	2001 2001
ABA Antitrust Law Section Task Force Conference “Time, Change, and Materiality for Monopolization Analyses”	2001
Harvard University Conference on American Economic Policy in the 1990s “Comments on Antitrust Policy in the Clinton Administration”	2001
Tel-Aviv Workshop on Industrial Organization and Anti-Trust “The Risk of Contagion from Multimarket Contact”	2001
2001 Antitrust Conference “Collusion Cases: Cutting Edge or Over the Edge?” “Dys-regulation of California Electricity”	2001 2001
FTC Public Workshop on Competition Policy for E-Commerce “Necessary Conditions for Cooperation to be Problematic”	2001
HIID International Workshop on Infrastructure Policy “Infrastructure Privatization and Regulation”	2000
Villa Mondragone International Economic Seminar “Competition Policy for Network and Internet Markets”	2000

New Developments in Railroad Economics: Infrastructure Investment and Access Policies “Railroad Access, Regulation, and Market Structure”	2000
The Multilateral Trading System at the Millennium “Efficiency Gains From Further Liberalization”	2000
Singapore – World Bank Symposium on Competition Law and Policy “Policy Towards Cartels and Collusion”	2000
CEPS: Is It a New World?: Economic Surprises of the Last Decade “The Internet and E-Commerce”	2000
Cutting Edge Antitrust: Issues and Enforcement Policies “The Direction of Antitrust Entering the New Millennium”	2000
The Conference Board: Antitrust Issues in Today’s Economy “Antitrust Analysis of Industries With Network Effects”	1999
CEPS: New Directions in Antitrust “Antitrust in a High-Tech World”	1999
World Bank Meeting on Competition and Regulatory Policies for Development “Economic Principles to Guide Post-Privatization Governance”	1999
1999 Antitrust Conference “Antitrust and the Pace of Technological Development”	1999
“Restructuring the Electric Utility Industry”	1999
HIID International Workshop on Privatization, Regulatory Reform and Corporate Governance “Privatization and Post-Privatization Regulation of Natural Monopolies”	1999
The Federalist Society: Telecommunications Deregulation: Promises Made, Potential Lost? “Grading the Regulators”	1999
Inter-American Development Bank: Second Generation Issues In the Reform Of Public Services “Post-Privatization Governance”	1999
“Issues Surrounding Access Arrangements”	1999
Economic Development Institute of the World Bank -- Program on Competition Policy “Policy Towards Horizontal Mergers”	1998

Twenty-fifth Anniversary Seminar for the Economic Analysis Group of the Department of Justice “Market Definition in Antitrust Analysis”	1998
HIID International Workshop on Privatization, Regulatory Reform and Corporate Governance “Infrastructure Architecture and Regulation: Railroads”	1998
EU Committee Competition Conference – Market Power “US/EC Perspective on Market Definition”	1998
Federal Trade Commission Roundtable “Antitrust Policy for Joint Ventures”	1998
1998 Antitrust Conference “Communications Mergers”	1998
The Progress and Freedom Foundation Conference on Competition, Convergence, and the Microsoft Monopoly Access and Bundling in High-Technology Markets	1998
FTC Program on The Effective Integration of Economic Analysis into Antitrust Litigation The Role of Economic Evidence and Testimony	1997
FTC Hearings on Classical Market Power in Joint Ventures Microeconomic Analysis and Guideline	1997
World Bank Economists --Week IV Keynote Making Markets More Effective With Competition Policy	1997
Brookings Trade Policy Forum Competition Policy and Antidumping: The Economic Effects	1997
University of Malaya and Harvard University Conference on The Impact of Globalization and Privatization on Malaysia and Asia in the Year 2020 Microeconomics, Privatization, and Vertical Integration	1997
ABA Section of Antitrust Law Conference on The Telecommunications Industry Current Economic Issues in Telecommunications	1997
Antitrust 1998: The Annual Briefing The Re-Emergence of Distribution Issues	1997

Inter-American Development Bank Conference on Private Investment, Infrastructure Reform and Governance in Latin America & the Caribbean Economic Principles to Guide Post-Privatization Governance	1997
Harvard Forum on Regulatory Reform and Privatization of Telecommunications in the Middle East Privatization: Methods and Pricing Issues	1997
American Enterprise Institute for Public Policy Research Conference Discussion of Local Competition and Legal Culture	1997
Harvard Program on Global Reform and Privatization of Public Enterprises “Infrastructure Privatization and Regulation: Freight”	1997
World Bank Competition Policy Workshop “Competition Policy for Entrepreneurship and Growth”	1997
Eastern Economics Association Paul Samuelson Lecture “Bottleneck Access in Regulation and Competition Policy”	1997
ABA Annual Meeting, Section of Antitrust Law “Antitrust in the 21st Century: The Efficiencies Guidelines”	1997
Peruvian Ministry of Energy and Mines Conference on Regulation of Public Utilities “Regulation: Theoretical Context and Advantages vs. Disadvantages”	1997
The FCC: New Priorities and Future Directions “Competition in the Telecommunications Industry”	1997
American Enterprise Institute Studies in Telecommunications Deregulation “The Scope of Competition in Telecommunications”	1996
George Mason Law Review Symposium on Antitrust in the Information Revolution “Introduction to the Economic Theory of Antitrust and Information”	1996
Korean Telecommunications Public Lecture “Market Opening and Fair Competition”	1996
Korea Telecommunications Forum “Desirable Interconnection Policy in a Competitive Market”	1996
European Association for Research in Industrial Economics Annual Conference “Bottleneck Access: Regulation and Competition Policy”	1996

Harvard Program on Global Reform and Privatization of Public Enterprises “Railroad and Other Infrastructure Privatization”	1996
FCC Forum on Antitrust and Economic Issues Involved with InterLATA Entry “The Scope of Telecommunications Competition”	1996
Citizens for a Sound Economy Policy Watch on Telecommunications Interconnection “The Economics of Interconnection”	1996
World Bank Seminar on Experiences with Corporatization “Strategic Directions of Privatization”	1996
FCC Economic Forum on the Economics of Interconnection Lessons from Other Industries	1996
ABA Annual Meeting, Section of Antitrust Law The Integration, Disintegration, and Reintegration of the Entertainment Industry	1996
Conference Board: 1996 Antitrust Conference How Economics Influences Antitrust and Vice Versa	1996
Antitrust 1996: A Special Briefing Joint Ventures and Strategic Alliances	1996
New York State Bar Association Section of Antitrust Law Winter Meeting Commentary on Horizontal Effects Issues	1996
FTC Hearings on the Changing Nature of Competition in a Global and Innovation-Driven Age Vertical Issues for Networks and Standards	1995
Wharton Seminar on Applied Microeconomics Access Policies with Imperfect Regulation	1995
Antitrust 1996, Washington D.C. Assessing Joint Ventures for Diminution of Competition	1995
ABA Annual Meeting, Section of Antitrust Law Refusals to Deal -- Economic Tests for Competitive Harm	1995
FTC Seminar on Antitrust Enforcement Analysis Diagnosing Collusion Possibilities	1995
Philadelphia Bar Education Center: Antitrust Fundamentals Antitrust--The Underlying Economics	1995

Vanderbilt University Conference on Financial Markets Why Do Christie and Schultz Infer Collusion From Their Data?	1995
ABA Section of Antitrust Law Chair=s Showcase Program Discussion of Telecommunications Competition Policy	1995
Conference Board: 1995 Antitrust Conference Analysis of Mergers and Joint Ventures	1995
ABA Conference on The New Antitrust: Policy of the '90s Antitrust on the Super Highways/Super Airways	1994
ITC Hearings on The Economic Effects of Outstanding Title VII Orders "The Economic Impacts of Antidumping Policies"	1994
OECD Working Conference on Trade and Competition Policy "Empirical Evidence on The Nature of Anti-dumping Actions"	1994
Antitrust 1995, Washington D.C. "Rigorous Antitrust Standards for Distribution Arrangements"	1994
ABA -- Georgetown Law Center: Post Chicago-Economics: New Theories - New Cases? "Economic Foundations for Vertical Merger Guidelines"	1994
Conference Board: Antitrust Issues in Today's Economy "New Democrats, Old Agencies: Competition Law and Policy"	1994
Federal Reserve Board Distinguished Economist Series "Regulated Private Enterprise Versus Public Enterprise"	1994
Institut d'Etudes Politiques de Paris "Lectures on Competition Policy and Privatization"	1993
Canadian Bureau of Competition Policy Academic Seminar Series, Toronto. "Public Versus Regulated Private Enterprise"	1993
CEPS Symposium on The Clinton Administration: A Preliminary Report Card "Policy Towards Business"	1993
Columbia Institute for Tele-Information Conference on Competition in Network Industries, New York, NY "Discussion of Deregulation of Networks: What Has Worked and What Hasn't"	1993
World Bank Annual Conference on Development Economics "Public Versus Regulated Private Enterprise"	1993

Center for Public Utilities Conference on Current Issues Challenging the Regulatory Process	
"The Economics of Current Issues in Telecommunications Regulation"	1992
"The Role of Markets in Presently Regulated Industries"	1992
The Conference Board's Conference on Antitrust Issues in Today's Economy, New York, NY	
"Antitrust in the Global Economy"	1992
"Monopoly Issues for the '90s"	1993
Columbia University Seminar on Applied Economic Theory, New York, NY	
"Economic Rationales for the Scope of Privatization"	1992
Howrey & Simon Conference on Antitrust Developments, Washington, DC	
"Competitive Effects of Concern in the Merger Guidelines"	1992
Arnold & Porter Colloquium on Merger Enforcement, Washington, DC	
"The Economic Foundations of the Merger Guidelines"	1992
American Bar Association, Section on Antitrust Law Leadership Council Conference, Monterey, CA	
"Applying the 1992 Merger Guidelines"	1992
OECD Competition Policy Meeting, Paris, France	
"The Economic Impacts of Antidumping Policy"	1992
Center for Public Choice Lecture Series, George Mason University Arlington, VA	
"The Economic Impacts of Antidumping Policy"	1992
Brookings Institution Microeconomics Panel, Washington, DC,	
"Discussion of the Evolution of Industry Structure"	1992
AT&T Conference on Antitrust Essentials	
"Antitrust Standards for Mergers and Joint Ventures"	1991
ABA Institute on The Cutting Edge of Antitrust: Market Power	
"Assessing and Proving Market Power: Barriers to Entry"	1991
Second Annual Workshop of the Competition Law and Policy Institute of New Zealand	
"Merger Analysis, Industrial Organization Theory, and Merger Guidelines"	1991
"Exclusive Dealing and the <u>Fisher & Paykel</u> Case"	1991
Special Seminar of the New Zealand Treasury	
"Strategic Behavior, Antitrust, and The Regulation of Natural Monopoly"	1991

Public Seminar of the Australian Trade Practices Commission "Antitrust Issues of the 1990's"	1991
National Association of Attorneys General Antitrust Seminar "Antitrust Economics"	1991
District of Columbia Bar's 1991 Annual Convention "Administrative and Judicial Trends in Federal Antitrust Enforcement"	1991
ABA Spring Meeting "Antitrust Lessons From the Airline Industry"	1991
Conference on The Transition to a Market Economy - Institutional Aspects "Anti-Monopoly Policies and Institutions"	1991
Conference Board's Thirtieth Antitrust Conference "Antitrust Issues in Today's Economy"	1991
American Association for the Advancement of Science Annual Meeting "Methodologies for Economic Analysis of Mergers"	1991
General Seminar, Johns Hopkins University "Economic Rationales for the Scope of Privatization"	1991
Capitol Economics Speakers Series "Economics of Merger Guidelines"	1991
CRA Conference on Antitrust Issues in Regulated Industries "Enforcement Priorities and Economic Principles"	1990
Pepper Hamilton & Scheetz Anniversary Colloquium "New Developments in Antitrust Economics"	1990
PLI Program on Federal Antitrust Enforcement in the 90's "The Antitrust Agenda of the 90's"	1990
FTC Distinguished Speakers Seminar "The Evolving Merger Guidelines"	1990
The World Bank Speakers Series "The Role of Antitrust Policy in an Open Economy"	1990
Seminar of the Secretary of Commerce and Industrial Development of Mexico "Transitions to a Market Economy"	1990

Southern Economics Association	
"Entry in Antitrust Analysis of Mergers"	1990
"Discussion of Strategic Investment and Timing of Entry"	1990
American Enterprise Institute Conference on Policy Approaches to the Deregulation of Network Industries	
"Discussion of Network Problems and Solutions"	1990
American Enterprise Institute Conference on Innovation, Intellectual Property, and World Competition	
"Law and Economics Framework for Analysis"	1990
Banco Nacional de Desenvolvimento Economico Social Lecture	
"Competition Policy: Harnessing Private Interests for the Public Interest"	1990
Western Economics Association Annual Meetings	
"New Directions in Antitrust from a New Administration"	1990
"New Directions in Merger Enforcement: The View from Washington"	1990
Woodrow Wilson School Alumni Colloquium	
"Microeconomic Policy Analysis and Antitrust--Washington 1990"	1990
Arnold & Porter Lecture Series	
"Advocating Competition"	1991
"Antitrust Enforcement"	1990
ABA Antitrust Section Convention	
"Recent Developments in Market Definition and Merger Analysis"	1990
Federal Bar Association	
"Joint Production Legislation: Competitive Necessity or Cartel Shield?"	1990
Pew Charitable Trusts Conference	
"Economics and National Security"	1990
ABA Antitrust Section Midwinter Council Meeting	
"Fine-tuning the Merger Guidelines"	1990
"The State of the Antitrust Division"	1991
International Telecommunications Society Conference	
"Discussion of the Impact of Telecommunications in the UK"	1989
The Economists of New Jersey Conference	
"Recent Perspectives on Regulation"	1989

Conference on Current Issues Challenging the Regulatory Process	
"Innovative Pricing and Regulatory Reform"	1989
"Competitive Wheeling"	1989
Conference Board: Antitrust Issues in Today's Economy	
"Foreign Trade Issues and Antitrust"	1989
McKinsey & Co. Mini-MBA Conference	
"Economic Analysis of Pricing, Costing, and Strategic Business Behavior"	1989
	1994
Olin Conference on Regulatory Mechanism Design	
"Revolutions in Regulatory Theory and Practice: Exploring The Gap"	1989
University of Dundee Conference on Industrial Organization and Strategic Behavior	
"Mergers in Differentiated Product Industries"	1988
Leif Johanson Lectures at the University of Oslo	
"Normative Issues in Industrial Organization"	1988
Mergers and Competitiveness: Spain Facing the EEC	
"Merger Policy"	1988
"R&D Joint Ventures"	1988
New Dimensions in Pricing Electricity	
"Competitive Pricing and Regulatory Reform"	1988
Program for Integrating Economics and National Security: Second Annual Colloquium	
"Arming Decisions Under Asymmetric Information"	1988
European Association for Research in Industrial Economics	
"U.S. Railroad Deregulation and the Public Interest"	1987
"Economic Rationales for the Scope of Privatization"	1989
"Discussion of Licensing of Innovations"	1990
Annenberg Conference on Rate of Return Regulation in the Presence of Rapid Technical Change	
"Discussion of Regulatory Mechanism Design in the Presence of Research, Innovation, and Spillover Effects"	1987
Special Brookings Papers Meeting	
"Discussion of Empirical Approaches to Strategic Behavior"	1987
"New Merger Guidelines"	1990
Deregulation or Regulation for Telecommunications in the 1990's	
"How Effective are State and Federal Regulations?"	1987

Conference Board Roundtable on Antitrust "Research and Production Joint Ventures"	1990
"Intellectual Property and Antitrust"	1987
Current Issues in Telephone Regulation "Economic Approaches to Market Dominance: Applicability of Contestable Markets"	1987
Harvard Business School Forum on Telecommunications "Regulation of Information Services"	1987
The Fowler Challenge: Deregulation and Competition in The Local Telecommunications Market "Why Reinvent the Wheel?"	1986
World Bank Seminar on Frontiers of Economics "What Every Economist Should Know About Contestable Markets"	1986
Bell Communications Research Conference on Regulation and Information "Fuzzy Regulatory Rules"	1986
Karl Eller Center Forum on Telecommunications "The Changing Economic Environment in Telecommunications: Technological Change and Deregulation"	1986
Railroad Accounting Principles Board Colloquium "Contestable Market Theory and ICC Regulation"	1986
Canadian Embassy Conference on Current Issues in Canadian -- U.S. Trade and Investment "Regulatory Revolution in the Infrastructure Industries"	1985
Eagleton Institute Conference on Telecommunications in Transition "Industry in Transition: Economic and Public Policy Overview"	1985
Brown University Citicorp Lecture "Logic of Regulation and Deregulation"	1985
Columbia University Communications Research Forum "Long Distance Competition Policy"	1985
American Enterprise Institute Public Policy Week "The Political Economy of Regulatory Reform"	1984
MIT Communications Forum "Deregulation of AT&T Communications"	1984

Bureau of Census Longitudinal Establishment Data File and Diversification Study Conference "Potential Uses of The File"	1984
Federal Bar Association Symposium on Joint Ventures "The Economics of Joint Venture Assessment"	1984
Hoover Institute Conference on Antitrust "Antitrust for High-Technology Industries"	1984
NSF Workshop on Predation and Industrial Targeting "Current Economic Analysis of Predatory Practices"	1983
The Institute for Study of Regulation Symposium: Pricing Electric, Gas, and Telecommunications Services Today and for the Future "Contestability As A Guide for Regulation and Deregulation"	1984
University of Pennsylvania Economics Day Symposium "Contestability and Competition: Guides for Regulation and Deregulation"	1984
Pinhas Sapir Conference on Economic Policy in Theory and Practice "Corporate Governance and Market Structure"	1984
Centre of Planning and Economic Research of Greece "Issues About Industrial Deregulation" "Contestability: New Research Agenda"	1984 1984
Hebrew and Tel Aviv Universities Conference on Public Economics "Social Welfare Dominance Extended and Applied to Excise Taxation"	1983
NBER Conference on Industrial Organization and International Trade "Perspectives on Horizontal Mergers in World Markets"	1983
Workshop on Local Access: Strategies for Public Policy "Market Structure and Government Intervention in Access Markets"	1982
NBER Conference on Strategic Behavior and International Trade "Industrial Strategy with Committed Firms: Discussion"	1982
Columbia University Graduate School of Business, Conference on Regulation and New Telecommunication Networks "Local Pricing in a Competitive Environment"	1982

International Economic Association Roundtable Conference on New Developments in the Theory of Market Structure	
"Theory of Contestability"	1982
"Product Dev., Investment, and the Evolution of Market Structures"	1982
N.Y.U. Conference on Competition and World Markets: Law and Economics	
"Competition and Trade Policy--International Predation"	1982
CNRS-ISPE-NBER Conference on the Taxation of Capital	
"Welfare Effects of Investment Under Imperfect Competition"	1982
Internationales Institut fur Management und Verwaltung Regulation Conference	
"Welfare, Regulatory Boundaries, and the Sustainability of Oligopolies"	1981
NBER-Kellogg Graduate School of Management Conference on the Econometrics of Market Models with Imperfect Competition	
"Discussion of Measurement of Monopoly Behavior: An Application to the Cigarette Industry"	1981
The Peterkin Lecture at Rice University	
"Deregulation: Ideology or Logic?"	1981
FTC Seminar on Antitrust Analysis	
"Viewpoints on Horizontal Mergers"	1982
"Predation as a Tactical Inducement for Exit"	1980
NBER Conference on Industrial Organization and Public Policy	
"An Economic Definition of Predation"	1980
The Center for Advanced Studies in Managerial Economics Conference on The Economics of Telecommunication	
"Pricing Local Service as an Input"	1980
Aspen Institute Conference on the Future of the Postal Service	
"Welfare Economics of Postal Pricing"	1979
Department of Justice Antitrust Seminar	
"The Industry Performance Gradient Index"	1979
Eastern Economic Association Convention	
"The Social Performance of Deregulated Markets for Telecom Services"	
1979	
Industry Workshop Association Convention	
"Customer Equity and Local Measured Service"	1979

Symposium on Ratemaking Problems of Regulated Industries "Pricing Decisions and the Regulatory Process"	1979
Woodrow Wilson School Alumni Conference "The Push for Deregulation"	1979
NBER Conference on Industrial Organization "Intertemporal Sustainability"	1979
World Congress of the Econometric Society "Theoretical Industrial Organization"	1980
Institute of Public Utilities Conference on Current Issues in Public Utilities Regulation "Network Access Pricing"	1978
ALI-ABA Conference on the Economics of Antitrust "Predatoriness and Discriminatory Pricing"	1978
AEI Conference on Postal Service Issues "What Can Markets Control?"	1978
University of Virginia Conference on the Economics of Regulation "Public Interest Pricing"	1978
DRI Utility Conference "Marginal Cost Pricing in the Utility Industry: Impact and Analysis"	1978
International Meeting of the Institute of Management Sciences "The Envelope Theorem"	1977
University of Warwick Workshop on Oligopoly "Industry Performance Gradient Indexes"	1977
North American Econometric Society Convention "Intertemporal Sustainability"	1979
"Social Welfare Dominance"	1978
"Economies of Scope, DAIC, and Markets with Joint Production"	1977

Telecommunications Policy Research Conference	
"Transition to Competitive Markets"	1986
"InterLATA Capacity Growth, Capped NTS Charges and Long Distance Competition"	1985
"Market Power in The Telecommunications Industry"	1984
"FCC Policy on Local Access Pricing"	1983
"Do We Need a Regulatory Safety Net in Telecommunications?"	1982
"Anticompetitive Vertical Conduct"	1981
"Electronic Mail and Postal Pricing"	1980
"Monopoly, Competition and Efficiency": Chairman	1979
"A Common Carrier Research Agenda"	1978
"Empirical Views of Ramsey Optimal Telephone Pricing"	1977
"Recent Research on Regulated Market Structure"	1976
"Some General Equilibrium Views of Optimal Pricing"	1975
National Bureau of Economic Research Conference on Theoretical Industrial Organization	
"Compensating Variation as a Measure of Welfare Change"	1976
Conference on Pricing in Regulated Industries: Theory & Application	
"Ramsey Optimal Pricing of Long Distance Telephone Services"	1977
NBER Conference on Public Regulation	
"Income Distributional Concerns in Regulatory Policy-Making"	1977
Allied Social Science Associations National Convention	
"Merger Guidelines and Economic Theory"	1990
Discussion of "Competitive Rules for Joint Ventures"	1989
"New Schools in Industrial Organization"	1988
"Industry Economic Analysis in the Legal Arena"	1987
"Transportation Deregulation"	1984
Discussion of "Pricing and Costing of Telecommunications Services"	1983
Discussion of "An Exact Welfare Measure"	1982
"Optimal Deregulation of Telephone Services"	1982
"Sector Differentiated Capital Taxes"	1981
"Economies of Scope"	1980
"Social Welfare Dominance"	1980
"The Economic Definition of Predation"	1979
Discussion of "Lifeline Rates, Succor or Snare?"	1979
"Multiproduct Technology and Market Structure"	1978
"The Economic Gradient Method"	1978
"Methods for Public Interest Pricing"	1977
Discussion of "The Welfare Implications of New Financial Instruments"	1976
"Welfare Theory of Concentration Indices"	1976
Discussion of "Developments in Monopolistic Competition Theory"	1976
"Hedonic Price Adjustments"	1975

"Public Good Attributes of Information and its Optimal Pricing"	1975
"Risk Invariance and Ordinally Additive Utility Functions"	1974
"Consumer's Surplus: A Rigorous Cookbook"	1974
University of Chicago Symposium on the Economics of Regulated Public Utilities "Optimal Prices for Public Purposes"	1976
American Society for Information Science "The Social Value of Information: An Economist's View"	1975
Institute for Mathematical Studies in the Social Sciences Summer Seminar "The Sustainability of Natural Monopoly"	1975
U.S.-U.S.S.R. Symposium on Estimating Costs and Benefits of Information Services "The Evaluation of the Economic Benefits of Productive Information"	1975
NYU-Columbia Symposium on Regulated Industries "Ramsey Optimal Public Utility Pricing"	1975

Research Seminars:

Bell Communications Research (2)	University of California, San Diego
Bell Laboratories (numerous)	University of Chicago
Department of Justice (3)	University of Delaware
Electric Power Research Institute	University of Florida
Federal Reserve Board	University of Illinois
Federal Trade Commission (4)	University of Iowa (2)
Mathematica	Universite Laval
Rand	University of Maryland
World Bank (3)	University of Michigan
Carleton University	University of Minnesota
Carnegie-Mellon University	University of Oslo
Columbia University (4)	University of Pennsylvania (3)
Cornell University (2)	University of Toronto
Georgetown University	University of Virginia
Harvard University (2)	University of Wisconsin

Hebrew University	University of Wyoming
Johns Hopkins University (2)	Vanderbilt University
M. I. T. (4)	Yale University (2)
New York University (4)	Princeton University (many)
Northwestern University (2)	Rice University
Norwegian School of Economics and Business Administration	Stanford University (5)
	S.U.N.Y. Albany

Robert Willig Expert Testimony Provided in the Last Four Years

1. In re Public Offering Fee Antitrust Litigation and Issuer Plaintiff Public Offering Fee Antitrust Litigation, In the U.S. District Court for the Southern District of New York, 98 Civ. 7890 (LMM) and 00 Civ. 7804 (LMM); Expert Report 5/25/2005; Deposition, 9/15/2005; Rebuttal Report 1/09/2008.
2. Mylan Pharmaceuticals Inc., Mylan Laboratories Inc., and UDL Laboratories Inc., v. Clifford Chance US LLP, and Clifford Chance Rogers & Wells LLP, In the United States District Court For The Northern District Of West Virginia, Civil Action No.: 1:03 CV 16; Expert Report 3/31/2006, Deposition 7/28/2006.
3. Bob L. McIntosh and Chris Petersen (d/b/a C-K Farms) v. Monsanto Company, et al., In the United States District Court for the Eastern District of Missouri, Civil No. 4:01cv00065RWS, Expert Report, 7/10/2006, Deposition 8/23/2006.
4. The SCO Group, Inc. v. International Business Machines Corporation, In the United States District Court For The District of Utah, Civil No. 2: 03-CV-0294 DAK, Expert Report 7/17/2006, Deposition 10/6/2006.
5. New England Carpenters Health Benefits Fund et al.v. First Databank, Inc., and McKesson Corp. In the United States District Court for the District of Massachusetts, Civil Action: 1:05-CV-11148-PBS, Expert Report 1/24/2007; Rebuttal Expert Declaration 5/07/2007; Expert Declaration 10/15/2007; Rebuttal Expert Declaration 11/08/2007; Expert Declaration 11/28/2007. Expert Declaration 5/21/08. Expert Report 10/1/08.
6. American Express Travel Related Services Company, Inc. v. Visa U.S.A. Inc., et al, In the U.S. District Court for the Southern District of New York, Civil Action No.1:04-CV-08967-BSJ-DEF; Expert Report 7/23/2007; Rebuttal Report 12/18/2007; Deposition 01/23-24/2008; Declaration 3/21/2008.
7. Jason White, Brian Polak, Jovan Harris, and Chris Craig on Behalf of Themselves and All Others Similarly Situated v. National Collegiate Athletic Association, In the United States District Court Central District of California Western Division, No. CV 06-0999 VBF (MANx); Expert Report 9/6/2007.
8. In re OSB Antitrust Litigation, In the United States District Court for the Eastern District of Pennsylvania, Master File No. 06-CV-00826 (PSD); Expert Report 9/24/2007; Deposition 11/15/2007.
9. In re Universal Service Fund Telephone Billing Practices Litigation, MDL No. 1468, All Cases, In the United States District Court for the District of Kansas; Expert Report 10/05/2007; Deposition 11/30/2007.

10. Cindy Cullen, Wendy Fleishman, on Behalf of Themselves and All Others Similarly Situated v. Albany Medical Center, Ellis Hospital, Northeast Health, Seton Health System, and St. Peter's Health Care Service, In the United States District Court for the Northern District of New York, Civil Action No. 06-CV-0765/ TJM/ DRH; Expert Report 2/29/2008; Deposition 3/27-28/2008; Expert Report 9/4/2009; Deposition 11/19-20/2009, Declaration 12/28/2009.
11. In the Matter of Verizon New Jersey, Inc. – Resolution for Assistance Resolving Interconnection Negotiations with US Cable of Paramus/Hillsdale, Time Warner Cable, Cablevision, and Comcast; Before the State of New Jersey Office of Board of Public Utilities, Docket No. CO07070524; Expert Report 4/21/2008; Testimony 5/12/2008.
12. In the Matter of Rambus Inc. v. Micron Technology, Inc., et al. In the Superior Court of the State of California County of San Francisco, Civil Action No. 04-431105; Expert Report 11/08/2008; Supplemental Expert Report 12/19/2008, Deposition Testimony 5/7/2009-5/8/2009
13. In the Matter of Lisa Reed and Cindy Digiannantonio v. Advocate Health Care, et al. In the Northern District of Illinois Eastern Division, Civil Action No. 06 C 3337; Expert Report 1/20/2009; Supplemental 2/27/2009; Deposition Testimony 3/23/2009-3/24/2009.
14. In the Australian Competition Tribunal: Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 23 May 2006 under Section 44H(9) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Mount Newman Railway Line, By: Fortescue Metals Group Limited; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Robe Railway By: Robe River Mining Co PTY LTD & ORS; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Hamersley Rail Network, By: Hamersley Iron Co PTY LTD & ORS; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Goldsworthy Railway, By: BHP Billiton Iron Ore PTY LTD and BHP Billiton Minerals PTY LTD; Expert Report 6/30/2009 and 9/18/2009, Testimony 11/2/2009-11/6/2009.
15. Stagecoach Group PLC and Coach USA, Inc., et al, Acquisition of Control, Twin America, LLC, Before the Surface Transportation Board, Verified Statement of Professor Robert D. Willig, Submitted November 17, 2009.

16. In Re McKesson Governmental Entities Average Wholesale Price Litigation, Master File No.: 1:08-CV-10843-PBS; Related to San Francisco Health Plan v. McKesson Corp., The Board of County Commissioners of Douglas County, Kansas et al. v. McKesson Corp.; Expert Report, April 14, 2010; Response Report, June 28, 2010; Related to Connecticut v. McKesson Corp.; Expert Report, April 14, 2010.
17. Before the Surface Transportation Board: Docket Number EP 704: Review of Commodity, Boxcar, and TOFC/COFC Exemptions; written statement 1/31/2011; testimony at hearing 2/23/2011 and 2/24/2011.
18. Before the Federal Reserve Bank: Docket Number R-1404: Proposed Rule on Debit Card Interchange Fees and Routing, written statement 2/22/2011.
19. Before the Surface Transportation Board: Docket Number EP 705: Competition in the Rail Industry, written statement 4/12/2011.
20. The Commerce Commission vs. Malaysian Airline Systems Berhad, Ltd.; High Court of New Zealand: CV 2008-404-8350, written statement 4/28/2011.
21. Before the Surface Transportation Board: Docket Number EP 705: Competition in the Rail Industry, written reply statement 5/27/2011; testimony at hearing will take place 6/22/2011 or 6/23/2011.
22. Before the Federal Communications Commission: Docket Number 11-65: For Consent to Assign or Transfer Control Licenses and Authorization, written reply statement 6/9/2011.

APPENDIX 2

Appendix 2

Documents and Data Relied Upon

Court Filings

Second Amended Class Action Complaint In Re: Checking Account Overdraft Litigation, Luquetta, et al. V. JPMorgan Chase Bank, N.A.

Plaintiff's Motion for Class Certification and Incorporated Memorandum of Law In Re: Checking Account Overdraft Litigation, Lopez v. JPMorgan Chase Bank, N.A. and Luquetta v. JPMorgan Chase Bank, N.A., April 25, 2011

Declaration of Arthur Olsen in Support of Support of Plaintiff's Motion for Class Certification and Incorporated Memorandum of Law In Re: Checking Account Overdraft Litigation, Lopez v. JPMorgan Chase Bank, N.A. and Luquetta v. JPMorgan Chase Bank, N.A., April 25, 2011

Trial Testimony

Transcript of Proceedings in Gutierrez v. Wells Fargo, April 30, 2010

Depositions

Deposition of Andrea Luquetta, May 3, 2011

Deposition of Ralph O. Slenker, III, December 2, 2010

Industry Documents

F. Hayashi, R.J. Sullivan and S.E. Weiner, "A Guide to the ATM and Debit Card Industry," Federal Reserve Bank of Kansas City (2006; updated 2011 – unpublished)

The Nilson Reports, Select Issues from 1991 - 2000

Company Documents and Data

Retail Marketing, High to Low Posting Analysis, 'Reposting' WaMu Transaction using the Chase Posting Process, July 2009

WaMu Exception Review, January 20, 2010 (WaMu IPA Analysis (Txns).xls)

Selected Debit Card Customer Account Data

APPENDIX 3

Appendix 3
Examples of Changes In Paid Transactions When Posting Order Is Change

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 1												
Account DIM Number: 3085110, Posting Date: 12/23/2009, Beginning Balance: \$900.19												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		900.19			Beginning Balance	900.19				Beginning Balance	900.19	
Deposit	138.00	1,038.19			Deposit	138.00	1,038.19			Deposit	138.00	1,038.19
ACH Debit	-892.94	145.25	12/22/09	15:38:36	ATM Withdrawal	-100.00	938.19	12/22/09	15:38:36	ATM Withdrawal	-100.00	938.19
ACH Check Debit	-332.57	-187.32	12/22/09	15:39:08	ATM Withdrawal	-60.00	878.19	12/22/09	15:39:08	ATM Withdrawal	-60.00	878.19
ATM Withdrawal	-100.00	-287.32			ACH Debit	-892.94	-14.75			ACH Debit	-892.94	-14.75
ATM Withdrawal	-60.00	-347.32			ACH Check Debit	-332.57	-347.32			ACH Check Debit	-332.57	-14.75
ACH Debit	-49.00	-347.32								ACH Debit	-49.00	-63.75
Check (Image Only)	-23.37	-347.32								Check (Image Only)	-23.37	-87.12
OD Fees	-105.00	-452.32			OD Fees	-70.00	-417.32			OD Fees	-105.00	-192.12
NSF Fees	-70.00	-522.32			NSF Fees	-70.00	-487.32			NSF Fees	-35.00	-227.12
Not-posted Transactions												
					ACH Debit	-49.00						
					Check (Image Only)	-23.37						
Example 2												
Account DIM Number: 3816417, Posting Date: 12/10/2009, Beginning Balance: \$651.39												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		651.39			Beginning Balance	651.39				Beginning Balance	651.39	
Check (Image Only)	-370.00	281.39	12/9/09	7:32:44	ATM Purchase	-134.54	516.85	12/9/09	07:32:44	ATM Purchase	-134.54	516.85
Check (Image Only)	-165.00	116.39	12/9/09	15:52:00	ATM Purchase w/ PIN	-49.33	467.52	12/9/09	15:52:00	ATM Purchase w/ PIN	-49.33	467.52
ATM Purchase	-134.54	-18.15			Check (Image Only)	-370.00	97.52			Check (Image Only)	-370.00	97.52
ATM Purchase w/ PIN	-49.33	-67.48			Check (Image Only)	-165.00	-67.48			Check (Image Only)	-165.00	97.52
OD Fees	-70.00	-137.48			OD Fees	-35.00	-102.48			OD Fees	0.00	97.52
NSF Fees	0.00	-137.48			NSF Fees	0.00	-102.48			NSF Fees	-35.00	62.52
Example 3												
Account DIM Number: 3816417, Posting Date: 01/08/2010, Beginning Balance: \$166.21												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		166.21			Beginning Balance	166.21				Beginning Balance	166.21	
ATM Withdrawal Fee	-2.00	164.21			ATM Withdrawal Fee	-2.00	164.21			ATM Withdrawal Fee	-2.00	164.21
ATM Inquiry Fee	-2.00	162.21			ATM Inquiry Fee	-2.00	162.21			ATM Inquiry Fee	-2.00	162.21
ACH Check Debit	-156.00	6.21	1/6/10	0:37:55	ATM Purchase	-30.00	132.21	1/6/10	00:37:55	ATM Purchase	-30.00	132.21
ATM Withdrawal	-63.00	-56.79	1/7/10	19:30:30	ATM Withdrawal	-63.00	69.21	1/7/10	19:30:30	ATM Withdrawal	-63.00	69.21
ATM Purchase	-30.00	-86.79			ACH Check Debit	-156.00	-86.79			ACH Check Debit	-156.00	69.21
OD Fees	-70.00	-156.79			OD Fees	-35.00	-121.79			OD Fees	0.00	69.21
NSF Fees	0.00	-156.79			NSF Fees	0.00	-121.79			NSF Fees	-35.00	34.21

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 4 Account DIM Number: 4642172, Posting Date: 01/11/2010, Beginning Balance: \$612.04 The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		612.04			Beginning Balance		612.04			Beginning Balance		612.04
Check (Image Only)	-410.00	202.04	1/7/10	18:23:25	ATM Purchase	-140.06	471.98	1/7/10	18:23:25	ATM Purchase	-140.06	471.98
ATM Purchase	-188.55	13.49	1/8/10	20:18:39	ATM Purchase	-30.85	441.13	1/8/10	20:18:39	ATM Purchase	-30.85	441.13
ATM Purchase	-140.06	-126.57	1/8/10	20:28:15	ATM Purchase	-36.06	405.07	1/8/10	20:28:15	ATM Purchase	-36.06	405.07
ATM Purchase	-123.86	-250.43	1/9/10	8:58:17	ATM Withdrawal	-40.00	365.07	1/9/10	08:58:17	ATM Withdrawal	-40.00	365.07
ATM Withdrawal	-40.00	-290.43	1/9/10	11:26:22	ATM Purchase	-188.55	176.52	1/9/10	11:26:22	ATM Purchase	-188.55	176.52
ATM Purchase	-36.06	-326.49	1/9/10	16:07:40	ATM Purchase	-123.86	52.66	1/9/10	16:07:40	ATM Purchase	-123.86	52.66
ATM Purchase	-30.85	-357.34	1/9/10	17:28:15	ATM Purchase w/ PIN	-17.22	35.44	1/9/10	17:28:15	ATM Purchase w/ PIN	-17.22	35.44
ATM Purchase w/ PIN	-17.22	-374.56			Check (Image Only)	-410.00	-374.56			Check (Image Only)	-410.00	35.44
OD Fees	-210.00	-584.56			OD Fees	-35.00	-409.56			OD Fees	0.00	35.44
NSF Fees	0.00	-584.56			NSF Fees	0.00	-409.56			NSF Fees	-35.00	0.44
Example 5 Account DIM Number: 5835165, Posting Date: 01/11/2010, Beginning Balance: \$-526.99 The daily OD limit value: \$700.00, the available ODP funds: \$0.00												
Beginning Balance		-526.99			Beginning Balance		-526.99			Beginning Balance		-526.99
ACH Debit	-148.06	-675.05	1/8/10	16:38:52	ATM Purchase	-29.92	-556.91	1/8/10	16:38:52	ATM Purchase	-29.92	-556.91
ATM Purchase	-29.92	-704.97	1/8/10	16:45:00	ATM Purchase	-12.00	-568.91	1/8/10	16:45:00	ATM Purchase	-12.00	-568.91
ATM Purchase	-12.00	-716.97			ACH Debit	-148.06	-716.97			ACH Debit	-148.06	-568.91
OD Fees	-105.00	-821.97			OD Fees	-105.00	-821.97			OD Fees	-70.00	-638.91
NSF Fees	0.00	-821.97			NSF Fees	0.00	-821.97			NSF Fees	-35.00	-673.91
Example 6 Account DIM Number: 7661631, Posting Date: 01/19/2010, Beginning Balance: \$900.48 The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		900.48			Beginning Balance		900.48			Beginning Balance		900.48
Stop Payment Fee	-25.00	875.48			Stop Payment Fee	-25.00	875.48			Stop Payment Fee	-25.00	875.48
ACH Debit	-600.00	275.48	1/15/10	17:31:00	ATM Purchase w/ PIN	-46.91	828.57	1/15/10	17:31:00	ATM Purchase w/ PIN	-46.91	828.57
ACH Debit	-355.74	-80.26	1/16/10	20:24:50	ATM Purchase with Cash Back	-62.63	765.94	1/16/10	20:24:50	ATM Purchase with Cash Back	-62.63	765.94
ATM Withdrawal	-100.00	-180.26	1/18/10	6:37:00	ATM Purchase	-12.95	752.99	1/18/10	06:37:00	ATM Purchase	-12.95	752.99
ACH Debit	-79.41	-180.26	1/18/10	9:42:42	ATM Withdrawal	-100.00	652.99	1/18/10	09:42:42	ATM Withdrawal	-100.00	652.99
ATM Purchase with Cash Back	-62.63	-242.89	1/18/10	11:23:16	ATM Purchase	-34.01	618.98	1/18/10	11:23:16	ATM Purchase	-34.01	618.98
ATM Purchase w/ PIN	-46.91	-289.80			ACH Debit	-600.00	18.98			ACH Debit	-600.00	18.98
ACH Debit	-44.32	-289.80			ACH Debit	-355.74	-336.76			ACH Debit	-355.74	18.98
Check (Image Only)	-40.00	-289.80								ACH Debit	-79.41	-60.43
ATM Purchase	-34.01	-323.81								ACH Debit	-44.32	-60.43
ATM Purchase	-12.95	-336.76								Check (Image Only)	-40.00	-60.43
ACH Debit	-7.00	-336.76								ACH Debit	-7.00	-67.43
OD Fees	-140.00	-476.76			OD Fees	-35.00	-371.76			OD Fees	-70.00	-137.43
NSF Fees	-70.00	-546.76			NSF Fees	-140.00	-511.76			NSF Fees	-105.00	-242.43
Not-posted Transactions												
					ACH Debit	-79.41						
					ACH Debit	-44.32						
					Check (Image Only)	-40.00						
					ACH Debit	-7.00						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 7												
Account DIM Number: 8765461, Posting Date: 11/20/2009, Beginning Balance: \$358.17												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		358.17			Beginning Balance		358.17			Beginning Balance		358.17
ACH Debit	-249.10	109.07	11/18/09	19:51:03	ATM Purchase	-54.97	303.20	11/18/09	19:51:03	ATM Purchase	-54.97	303.20
ACH Debit	-187.88	-78.81	11/19/09	9:13:00	ATM Purchase w/ PIN	-68.65	234.55	11/19/09	09:13:00	ATM Purchase w/ PIN	-68.65	234.55
ATM Purchase w/ PIN	-68.65	-147.46			ACH Debit	-249.10	-14.55			ACH Debit	-249.10	-14.55
ATM Purchase	-54.97	-202.43			ACH Debit	-187.88	-202.43			ACH Debit	-187.88	-14.55
OD Fees	-105.00	-307.43			OD Fees	-70.00	-272.43			OD Fees	-35.00	-49.55
NSF Fees	0.00	-307.43			NSF Fees	0.00	-272.43			NSF Fees	-35.00	-84.55
Example 8												
Account DIM Number: 13665357, Posting Date: 11/30/2009, Beginning Balance: \$955.66												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		955.66			Beginning Balance		955.66			Beginning Balance		955.66
Check (Image Only)	-257.39	698.27	11/27/09	6:56:38	ATM Purchase	-35.82	919.84	11/27/09	06:56:38	ATM Purchase	-35.82	919.84
ATM Purchase	-256.80	441.47	11/27/09	7:28:40	ATM Purchase	-210.23	709.61	11/27/09	07:28:40	ATM Purchase	-210.23	709.61
ATM Purchase	-210.23	231.24	11/27/09	7:37:43	ATM Purchase	-19.25	690.36	11/27/09	07:37:43	ATM Purchase	-19.25	690.36
ACH Debit	-124.30	106.94	11/27/09	8:25:22	ATM Purchase	-121.01	569.35	11/27/09	08:25:22	ATM Purchase	-121.01	569.35
ATM Purchase	-121.01	-14.07	11/27/09	9:43:15	ATM Purchase	-28.83	540.52	11/27/09	09:43:15	ATM Purchase	-28.83	540.52
ATM Withdrawal	-60.00	-74.07	11/27/09	11:48:49	ATM Purchase	-256.80	283.72	11/27/09	11:48:49	ATM Purchase	-256.80	283.72
ATM Purchase	-50.00	-124.07	11/27/09	12:51:20	ATM Purchase	-21.90	261.82	11/27/09	12:51:20	ATM Purchase	-21.90	261.82
ATM Purchase	-35.82	-159.89	11/27/09	13:22:05	ATM Purchase	-24.59	237.23	11/27/09	13:22:05	ATM Purchase	-24.59	237.23
ATM Purchase	-28.83	-188.72	11/28/09	13:59:40	ATM Purchase	-50.00	187.23	11/28/09	13:59:40	ATM Purchase	-50.00	187.23
ATM Purchase	-24.59	-213.31	11/28/09	14:04:04	ATM Withdrawal	-60.00	127.23	11/28/09	14:04:04	ATM Withdrawal	-60.00	127.23
ATM Purchase	-21.90	-235.21			Check (Image Only)	-257.39	-130.16			Check (Image Only)	-257.39	127.23
ATM Purchase	-19.25	-254.46			ACH Debit	-124.30	-254.46			ACH Debit	-124.30	2.93
OD Fees	-210.00	-464.46			OD Fees	-70.00	-324.46			OD Fees	0.00	2.93
NSF Fees	0.00	-464.46			NSF Fees	0.00	-324.46			NSF Fees	-35.00	-32.07
Example 9												
Account DIM Number: 13665357, Posting Date: 01/11/2010, Beginning Balance: \$1,021.33												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		1,021.33			Beginning Balance		1,021.33			Beginning Balance		1,021.33
ATM Withdrawal	-300.00	721.33	1/8/10	10:35:57	ATM Purchase	-13.68	1,007.65	1/8/10	10:35:57	ATM Purchase	-13.68	1,007.65
ATM Purchase	-300.00	421.33	1/8/10	12:50:26	ATM Purchase	-300.00	707.65	1/8/10	12:50:26	ATM Purchase	-300.00	707.65
ATM Purchase	-256.78	164.55	1/8/10	14:36:48	ATM Purchase	-42.77	664.88	1/8/10	14:36:48	ATM Purchase	-42.77	664.88
ATM Check Deposit Image	-130.00	34.55	1/8/10	16:23:00	ATM Purchase	-256.78	408.10	1/8/10	16:23:00	ATM Purchase	-256.78	408.10
ACH Check Debit	-107.22	34.55	1/8/10	16:48:37	ATM Withdrawal	-300.00	108.10	1/8/10	16:48:37	ATM Withdrawal	-300.00	108.10
ATM Purchase	-42.77	-8.22	1/8/10	17:10:55	ATM Purchase	-26.72	81.38	1/8/10	17:10:55	ATM Purchase	-26.72	81.38
ATM Purchase	-30.00	-38.22	1/8/10	18:07:39	ATM Purchase	-30.00	51.38	1/8/10	18:07:39	ATM Purchase	-30.00	51.38
ATM Purchase	-26.72	-64.94			ATM Check Deposit Image	-130.00	-78.62			ATM Check Deposit Image	-130.00	51.38
ATM Purchase	-13.68	-78.62			ACH Check Debit	-107.22	-185.84			ACH Check Debit	-107.22	51.38
OD Fees	-140.00	-218.62			OD Fees	-35.00	-113.62			OD Fees	0.00	51.38
NSF Fees	-35.00	-253.62			NSF Fees	-35.00	-148.62			NSF Fees	-70.00	-18.62
Not-posted Transactions												
					ACH Check Debit	-107.22						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 10												
Account DIM Number: 13665357, Posting Date: 01/25/2010, Beginning Balance: \$939.47												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		939.47			Beginning Balance		939.47			Beginning Balance		939.47
ATM Purchase	-235.07	704.40	1/22/10	1:43:59	ATM Purchase	-71.00	868.47	1/22/10	01:43:59	ATM Purchase	-71.00	868.47
ATM Purchase	-221.13	483.27	1/22/10	15:34:52	ATM Purchase	-40.93	827.54	1/22/10	15:34:52	ATM Purchase	-40.93	827.54
ATM Purchase w/ PIN	-102.47	380.80	1/22/10	16:24:44	ATM Purchase	-79.57	747.97	1/22/10	16:24:44	ATM Purchase	-79.57	747.97
ATM Purchase	-79.57	301.23	1/22/10	16:36:28	ATM Purchase	-21.40	726.57	1/22/10	16:36:28	ATM Purchase	-21.40	726.57
ATM Purchase	-71.00	230.23	1/22/10	17:03:30	ATM Purchase	-235.07	491.50	1/22/10	17:03:30	ATM Purchase	-235.07	491.50
ATM Purchase	-55.09	175.14	1/22/10	17:13:38	ATM Purchase	-40.00	451.50	1/22/10	17:13:38	ATM Purchase	-40.00	451.50
ATM Purchase	-40.93	134.21	1/23/10	12:18:33	ATM Purchase	-12.88	438.62	1/23/10	12:18:33	ATM Purchase	-12.88	438.62
ATM Purchase	-40.00	94.21	1/23/10	12:24:33	ATM Purchase	-11.46	427.16	1/23/10	12:24:33	ATM Purchase	-11.46	427.16
Check (Image Only)	-26.01	68.20	1/23/10	15:05:00	ATM Purchase w/ PIN	-102.47	324.69	1/23/10	15:05:00	ATM Purchase w/ PIN	-102.47	324.69
ATM Purchase	-24.50	43.70	1/23/10	15:34:16	ATM Purchase	-24.50	300.19	1/23/10	15:34:16	ATM Purchase	-24.50	300.19
ATM Purchase	-21.40	22.30	1/23/10	17:18:09	ATM Purchase	-11.85	288.34	1/23/10	17:18:09	ATM Purchase	-11.85	288.34
ATM Purchase	-12.88	9.42	1/23/10	18:14:41	ATM Purchase	-55.09	233.25	1/23/10	18:14:41	ATM Purchase	-55.09	233.25
ATM Purchase	-11.85	-2.43	1/24/10	16:00:58	ATM Purchase	-221.13	12.12	1/24/10	16:00:58	ATM Purchase	-221.13	12.12
ATM Purchase	-11.46	-13.89			Check (Image Only)	-26.01	-13.89			Check (Image Only)	-26.01	12.12
OD Fees	-70.00	-83.89			OD Fees	-35.00	-48.89			OD Fees	0.00	12.12
NSF Fees	0.00	-83.89			NSF Fees	0.00	-48.89			NSF Fees	-35.00	-22.88
Example 11												
Account DIM Number: 14565372, Posting Date: 12/28/2009, Beginning Balance: \$797.79												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		797.79			Beginning Balance		797.79			Beginning Balance		797.79
ATM Return	53.94	851.73			ATM Return	53.94	851.73			ATM Return	53.94	851.73
ACH Debit	-488.00	363.73	12/24/09	5:58:59	ATM Purchase	-5.00	846.73	12/24/09	05:58:59	ATM Purchase	-5.00	846.73
ATM Purchase	-280.61	83.12	12/24/09	6:35:22	ATM Purchase	-93.54	753.19	12/24/09	06:35:22	ATM Purchase	-93.54	753.19
ATM Purchase	-93.54	-10.42	12/24/09	10:49:33	ATM Purchase	-22.00	731.19	12/24/09	10:49:33	ATM Purchase	-22.00	731.19
ATM Purchase w/ PIN	-90.29	-100.71	12/24/09	11:40:44	ATM Purchase	-6.05	725.14	12/24/09	11:40:44	ATM Purchase	-6.05	725.14
ATM Purchase	-53.94	-154.65	12/24/09	12:05:50	ATM Purchase	-53.24	671.90	12/24/09	12:05:50	ATM Purchase	-53.24	671.90
ATM Purchase w/ PIN	-53.94	-208.59	12/24/09	13:12:14	ATM Purchase	-280.61	391.29	12/24/09	13:12:14	ATM Purchase	-280.61	391.29
ATM Purchase	-53.24	-261.83	12/24/09	13:14:00	ATM Purchase w/ PIN	-53.94	337.35	12/24/09	13:14:00	ATM Purchase w/ PIN	-53.94	337.35
ATM Purchase w/ PIN	-43.73	-305.56	12/24/09	14:02:56	ATM Purchase w/ PIN	-90.29	247.06	12/24/09	14:02:56	ATM Purchase w/ PIN	-90.29	247.06
ATM Purchase	-22.00	-327.56	12/24/09	15:30:04	ATM Purchase	-5.80	241.26	12/24/09	15:30:04	ATM Purchase	-5.80	241.26
ACH Debit	-12.00	-327.56	12/24/09	17:31:29	ATM Purchase	-9.95	231.31	12/24/09	17:31:29	ATM Purchase	-9.95	231.31
ATM Purchase	-9.95	-337.51	12/24/09	18:50:00	ATM Purchase w/ PIN	-43.73	187.58	12/24/09	18:50:00	ATM Purchase w/ PIN	-43.73	187.58
ATM Purchase	-6.05	-343.56			ATM Purchase	-53.94	133.64			ATM Purchase	-53.94	133.64
ATM Purchase	-5.80	-349.36			ACH Debit	-488.00	-354.36			ACH Debit	-488.00	133.64
ATM Purchase	-5.00	-354.36								ACH Debit	-12.00	121.64
OD Fees	-210.00	-564.36			OD Fees	-35.00	-389.36			OD Fees	0.00	121.64
NSF Fees	0.00	-564.36			NSF Fees	-35.00	-424.36			NSF Fees	-35.00	86.64
Not-posted Transactions												
					ACH Debit	-12.00						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 12												
Account DIM Number: 15536733, Posting Date: 11/23/2009, Beginning Balance: \$947.52												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		947.52			Beginning Balance		947.52			Beginning Balance		947.52
ATM Withdrawal	-440.00	507.52	11/18/09	20:29:08	ATM Purchase	-138.15	809.37	11/18/09	20:29:08	ATM Purchase	-138.15	809.37
ATM Check Deposit Image	-300.00	207.52	11/20/09	2:38:19	ATM Purchase	-11.48	797.89	11/20/09	02:38:19	ATM Purchase	-11.48	797.89
ATM Purchase	-138.15	69.37	11/20/09	9:15:35	ATM Purchase	-110.00	687.89	11/20/09	09:15:35	ATM Purchase	-110.00	687.89
ATM Purchase	-110.00	-40.63	11/20/09	23:36:40	ATM Purchase	-37.44	650.45	11/20/09	23:36:40	ATM Purchase	-37.44	650.45
ATM Purchase	-37.44	-78.07	11/21/09	12:53:13	ATM Withdrawal	-440.00	210.45	11/21/09	12:53:13	ATM Withdrawal	-440.00	210.45
ATM Purchase	-11.81	-89.88	11/21/09	23:39:38	ATM Purchase	-8.77	201.68	11/21/09	23:39:38	ATM Purchase	-8.77	201.68
ATM Purchase	-11.48	-101.36	11/22/09	14:18:06	ATM Purchase	-11.81	189.87	11/22/09	14:18:06	ATM Purchase	-11.81	189.87
ATM Purchase	-11.39	-112.75	11/22/09	20:59:51	ATM Purchase	-11.39	178.48	11/22/09	20:59:51	ATM Purchase	-11.39	178.48
ATM Purchase	-8.77	-121.52			ATM Check Deposit Image	-300.00	-121.52			ATM Check Deposit Image	-300.00	178.48
OD Fees	-210.00	-331.52			OD Fees	-35.00	-156.52			OD Fees	0.00	178.48
NSF Fees	0.00	-331.52			NSF Fees	0.00	-156.52			NSF Fees	-35.00	143.48
Example 13												
Account DIM Number: 18625491, Posting Date: 12/14/2009, Beginning Balance: \$5.97												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		5.97			Beginning Balance		5.97			Beginning Balance		5.97
ACH Debit	-268.30	-262.33	12/10/09	17:48:36	ATM Purchase	-18.88	-12.91	12/10/09	17:48:36	ATM Purchase	-18.88	-12.91
ATM Purchase	-42.59	-304.92	12/11/09	6:48:22	ATM Purchase	-42.59	-55.50	12/11/09	06:48:22	ATM Purchase	-42.59	-55.50
ATM Purchase	-18.88	-323.80			ACH Debit	-268.30	-323.80			ACH Debit	-268.30	-55.50
OD Fees	-105.00	-428.80			OD Fees	-105.00	-428.80			OD Fees	-70.00	-125.50
NSF Fees	0.00	-428.80			NSF Fees	0.00	-428.80			NSF Fees	-35.00	-160.50
Example 14												
Account DIM Number: 20147277, Posting Date: 11/24/2009, Beginning Balance: \$79.69												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		79.69			Beginning Balance		79.69			Beginning Balance		79.69
ATM Return	75.00	154.69			ATM Return	75.00	154.69			ATM Return	75.00	154.69
ACH Debit	-276.00	-121.31	11/20/09	15:35:42	ATM Purchase	-207.36	-52.67	11/20/09	15:35:42	ATM Purchase	-207.36	-52.67
ATM Purchase	-207.36	-328.67	11/23/09	10:26:11	ATM Purchase	-44.07	-96.74	11/23/09	10:26:11	ATM Purchase	-44.07	-96.74
ATM Purchase	-80.69	-409.36	11/23/09	15:41:37	ATM Purchase	-80.69	-177.43	11/23/09	15:41:37	ATM Purchase	-80.69	-177.43
ATM Purchase	-44.07	-453.43	11/23/09	15:42:23	ATM Purchase	-30.09	-207.52	11/23/09	15:42:23	ATM Purchase	-30.09	-207.52
ATM Purchase	-30.09	-483.52			ACH Debit	-276.00	-483.52			ACH Debit	-276.00	-207.52
OD Fees	-175.00	-658.52			OD Fees	-175.00	-658.52			OD Fees	-140.00	-347.52
NSF Fees	0.00	-658.52			NSF Fees	0.00	-658.52			NSF Fees	-35.00	-382.52

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 15												
Account DIM Number: 20405366, Posting Date: 01/05/2010, Beginning Balance: \$382.78												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		382.78			Beginning Balance		382.78			Beginning Balance		382.78
Check (Image Only)	-575.00	-192.22	1/4/10	18:33:08	ATM Purchase	-53.06	329.72	1/4/10	18:33:08	ATM Purchase	-53.06	329.72
Check (Image Only)	-220.00	-192.22			Check (Image Only)	-575.00	-245.28			Check (Image Only)	-575.00	-245.28
ACH Debit	-74.12	-266.34			ACH Debit	-74.12	-415.40			Check (Image Only)	-220.00	-245.28
ATM Purchase	-53.06	-319.40								ACH Debit	-74.12	-245.28
OD Fees	-96.00	-415.40			OD Fees	-64.00	-479.40			OD Fees	-32.00	-277.28
NSF Fees	-32.00	-447.40			NSF Fees	-32.00	-511.40			NSF Fees	-64.00	-341.28
Not-posted Transactions												
					Check (Image Only)	-220.00						
Example 16												
Account DIM Number: 40509647, Posting Date: 12/28/2009, Beginning Balance: \$452.95												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		452.95			Beginning Balance		452.95			Beginning Balance		452.95
ATM Purchase	-180.00	272.95	12/24/09	7:31:31	ATM Purchase	-35.00	417.95	12/24/09	07:31:31	ATM Purchase	-35.00	417.95
ATM Withdrawal	-120.00	152.95	12/24/09	7:35:57	ATM Purchase	-3.83	414.12	12/24/09	07:35:57	ATM Purchase	-3.83	414.12
ATM Purchase	-111.99	40.96	12/24/09	8:39:54	ATM Purchase	-180.00	234.12	12/24/09	08:39:54	ATM Purchase	-180.00	234.12
ACH Check Debit	-103.80	-62.84	12/24/09	11:27:19	ATM Purchase	-26.79	207.33	12/24/09	11:27:19	ATM Purchase	-26.79	207.33
ATM Purchase	-35.00	-97.84	12/24/09	12:40:12	ATM Purchase	-10.21	197.12	12/24/09	12:40:12	ATM Purchase	-10.21	197.12
ATM Purchase	-26.79	-124.63	12/24/09	13:40:36	ATM Purchase	-111.99	85.13	12/24/09	13:40:36	ATM Purchase	-111.99	85.13
ATM Purchase	-10.21	-134.84	12/25/09	15:30:16	ATM Withdrawal	-120.00	-34.87	12/25/09	15:30:16	ATM Withdrawal	-120.00	-34.87
ATM Purchase	-3.83	-138.67			ACH Check Debit	-103.80	-138.67			ACH Check Debit	-103.80	-34.87
OD Fees	-175.00	-313.67			OD Fees	-70.00	-208.67			OD Fees	-35.00	-69.87
NSF Fees	0.00	-313.67			NSF Fees	0.00	-208.67			NSF Fees	-35.00	-104.87
Example 17												
Account DIM Number: 40509647, Posting Date: 01/11/2010, Beginning Balance: \$523.63												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		523.63			Beginning Balance		523.63			Beginning Balance		523.63
ATM Return	14.25	537.88			ATM Return	14.25	537.88			ATM Return	14.25	537.88
ATM Withdrawal Fee	-2.00	535.88			ATM Withdrawal Fee	-2.00	535.88			ATM Withdrawal Fee	-2.00	535.88
ATM Withdrawal	-241.50	294.38	1/8/10	5:22:28	ATM Purchase	-37.74	498.14	1/8/10	05:22:28	ATM Purchase	-37.74	498.14
ATM Purchase	-200.00	94.38	1/8/10	16:47:56	ATM Purchase	-14.00	484.14	1/8/10	16:47:56	ATM Purchase	-14.00	484.14
ATM Purchase	-51.22	43.16	1/8/10	19:47:38	ATM Purchase	-15.95	468.19	1/8/10	19:47:38	ATM Purchase	-15.95	468.19
ATM Purchase	-37.74	5.42	1/8/10	19:57:13	ATM Purchase	-19.50	448.69	1/8/10	19:57:13	ATM Purchase	-19.50	448.69
ATM Purchase	-28.13	-22.71	1/8/10	20:05:38	ATM Purchase	-5.99	442.70	1/8/10	20:05:38	ATM Purchase	-5.99	442.70
ATM Purchase	-19.50	-42.21	1/9/10	11:27:46	ATM Purchase	-200.00	242.70	1/9/10	11:27:46	ATM Purchase	-200.00	242.70
ACH Check Debit	-18.66	-60.87	1/9/10	12:32:09	ATM Withdrawal	-241.50	1.20	1/9/10	12:32:09	ATM Withdrawal	-241.50	1.20
ATM Purchase	-17.02	-77.89	1/9/10	12:56:22	ATM Purchase	-28.13	-26.93	1/9/10	12:56:22	ATM Purchase	-28.13	-26.93
ATM Purchase	-15.95	-93.84	1/9/10	13:20:35	ATM Purchase	-17.02	-43.95	1/9/10	13:20:35	ATM Purchase	-17.02	-43.95
ATM Purchase	-14.00	-107.84	1/9/10	13:49:51	ATM Purchase	-5.98	-49.93	1/9/10	13:49:51	ATM Purchase	-5.98	-49.93
ATM Purchase	-5.99	-113.83	1/10/10	10:11:34	ATM Purchase	-51.22	-101.15	1/10/10	10:11:34	ATM Purchase	-51.22	-101.15
ATM Purchase	-5.98	-119.81			ACH Check Debit	-18.66	-119.81			ACH Check Debit	-18.66	-101.15
OD Fees	-210.00	-329.81			OD Fees	-175.00	-294.81			OD Fees	-140.00	-241.15
NSF Fees	0.00	-329.81			NSF Fees	0.00	-294.81			NSF Fees	-35.00	-276.15

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 18												
Account DIM Number: 48242895, Posting Date: 01/11/2010, Beginning Balance: \$201.12												
The daily OD limit value: \$80.00, the available ODP funds: \$0.00												
Beginning Balance		201.12			Beginning Balance		201.12			Beginning Balance		201.12
ATM Return	27.80	228.92			ATM Return	27.80	228.92			ATM Return	27.80	228.92
Deposit (Image only)	1,500.00	1,728.92			Deposit (Image only)	1,500.00	1,728.92			Deposit (Image only)	1,500.00	1,728.92
ACH Debit	-1,760.00	-31.08	1/9/10	15:49:46	ATM Purchase w/ PIN	-26.15	1,702.77	1/9/10	15:49:46	ATM Purchase w/ PIN	-26.15	1,702.77
ATM Purchase	-36.38	-67.46	1/10/10	6:03:49	ATM Purchase	-36.38	1,666.39	1/10/10	06:03:49	ATM Purchase	-36.38	1,666.39
ATM Purchase w/ PIN	-26.15	-93.61	1/10/10	12:59:28	ATM Purchase w/ PIN	-7.79	1,658.60	1/10/10	12:59:28	ATM Purchase w/ PIN	-7.79	1,658.60
ATM Purchase with Cash Back	-18.05	-111.66	1/10/10	13:08:00	ATM Purchase with Cash Back	-18.05	1,640.55	1/10/10	13:08:00	ATM Purchase with Cash Back	-18.05	1,640.55
ATM Purchase w/ PIN	-7.79	-119.45	1/10/10	14:17:24	ATM Purchase	-2.14	1,638.41	1/10/10	14:17:24	ATM Purchase	-2.14	1,638.41
ATM Purchase	-2.14	-121.59	1/10/10	17:11:18	ATM Purchase	-1.07	1,637.34	1/10/10	17:11:18	ATM Purchase	-1.07	1,637.34
ATM Purchase	-1.07	-122.66			ACH Debit	-1,760.00	-122.66			ACH Debit	-1,760.00	1,637.34
OD Fees	-210.00	-332.66			OD Fees	-35.00	-157.66			OD Fees	0.00	1,637.34
NSF Fees	0.00	-332.66			NSF Fees	0.00	-157.66			NSF Fees	-35.00	1,602.34
Example 19												
Account DIM Number: 49484284, Posting Date: 11/30/2009, Beginning Balance: \$256.33												
The daily OD limit value: \$80.00, the available ODP funds: \$0.00												
Beginning Balance		256.33			Beginning Balance		256.33			Beginning Balance		256.33
ATM Purchase	-145.02	111.31	11/26/09	9:06:56	ATM Purchase	-10.91	245.42	11/26/09	09:06:56	ATM Purchase	-10.91	245.42
ACH Debit	-112.67	-1.36	11/26/09	9:09:57	ATM Purchase	-4.86	240.56	11/26/09	09:09:57	ATM Purchase	-4.86	240.56
ATM Purchase w/ PIN	-38.63	-39.99	11/27/09	12:26:41	ATM Purchase	-145.02	95.54	11/27/09	12:26:41	ATM Purchase	-145.02	95.54
ATM Purchase	-20.00	-59.99	11/27/09	12:32:21	ATM Purchase w/ PIN	-6.49	89.05	11/27/09	12:32:21	ATM Purchase w/ PIN	-6.49	89.05
ATM Purchase	-10.91	-70.90	11/27/09	12:54:25	ATM Purchase	-20.00	69.05	11/27/09	12:54:25	ATM Purchase	-20.00	69.05
ATM Purchase w/ PIN	-6.49	-77.39	11/27/09	15:10:02	ATM Purchase w/ PIN	-38.63	30.42	11/27/09	15:10:02	ATM Purchase w/ PIN	-38.63	30.42
ATM Purchase	-4.86	-82.25	11/27/09	17:28:54	ATM Purchase	-4.52	25.90	11/27/09	17:28:54	ATM Purchase	-4.52	25.90
ATM Purchase	-4.52	-86.77			ACH Debit	-112.67	-86.77			ACH Debit	-112.67	25.90
OD Fees	-210.00	-296.77			OD Fees	-35.00	-121.77			OD Fees	0.00	25.90
NSF Fees	0.00	-296.77			NSF Fees	0.00	-121.77			NSF Fees	-35.00	-9.10
Example 20												
Account DIM Number: 77228279, Posting Date: 12/16/2009, Beginning Balance: \$118.90												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		118.90			Beginning Balance		118.90			Beginning Balance		118.90
ATM Purchase	-165.39	-46.49	12/14/09	4:15:46	ATM Purchase	-75.00	43.90	12/14/09	04:15:46	ATM Purchase	-75.00	43.90
ACH Debit	-110.00	-156.49	12/14/09	11:31:30	ATM Purchase	-165.39	-121.49	12/14/09	11:31:30	ATM Purchase	-165.39	-121.49
ATM Purchase	-75.00	-231.49	12/14/09	12:04:01	ATM Purchase	-50.00	-171.49	12/14/09	12:04:01	ATM Purchase	-50.00	-171.49
ATM Purchase	-50.00	-281.49	12/14/09	12:36:03	ATM Purchase	-25.00	-196.49	12/14/09	12:36:03	ATM Purchase	-25.00	-196.49
ATM Purchase	-25.00	-306.49			ACH Debit	-110.00	-306.49			ACH Debit	-110.00	-196.49
OD Fees	-175.00	-481.49			OD Fees	-140.00	-446.49			OD Fees	-105.00	-301.49
NSF Fees	0.00	-481.49			NSF Fees	0.00	-446.49			NSF Fees	-35.00	-336.49

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 21												
Account DIM Number: 77228757, Posting Date: 12/28/2009, Beginning Balance: \$597.66												
The daily OD limit value: \$80.00, the available ODP funds: \$0.00												
Beginning Balance		597.66			Beginning Balance		597.66			Beginning Balance		597.66
ATM Withdrawal Fee	-2.00	595.66			ATM Withdrawal Fee	-2.00	595.66			ATM Withdrawal Fee	-2.00	595.66
ATM Withdrawal Fee	-2.00	593.66			ATM Withdrawal Fee	-2.00	593.66			ATM Withdrawal Fee	-2.00	593.66
ATM Withdrawal Fee	-2.00	591.66			ATM Withdrawal Fee	-2.00	591.66			ATM Withdrawal Fee	-2.00	591.66
ATM Withdrawal	-202.50	389.16	12/26/09	16:11:10	ATM Withdrawal	-202.50	389.16	12/26/09	16:11:10	ATM Withdrawal	-202.50	389.16
ACH Debit	-179.87	209.29	12/27/09	14:57:09	ATM Withdrawal	-102.50	286.66	12/27/09	14:57:09	ATM Withdrawal	-102.50	286.66
ATM Purchase w/ PIN	-129.88	79.41	12/27/09	14:57:09	ATM Withdrawal	-102.50	184.16	12/27/09	14:57:09	ATM Withdrawal	-102.50	184.16
ATM Withdrawal	-102.50	-23.09	12/27/09	17:15:40	ATM Purchase w/ PIN	-129.88	54.28	12/27/09	17:15:40	ATM Purchase w/ PIN	-129.88	54.28
ATM Withdrawal	-102.50	-125.59	12/27/09	17:36:20	ATM Purchase w/ PIN	-45.45	8.83	12/27/09	17:36:20	ATM Purchase w/ PIN	-45.45	8.83
ATM Purchase w/ PIN	-45.45	-171.04			ACH Debit	-179.87	-171.04			ACH Debit	-179.87	8.83
OD Fees	-105.00	-276.04			OD Fees	-35.00	-206.04			OD Fees	0.00	8.83
NSF Fees	0.00	-276.04			NSF Fees	0.00	-206.04			NSF Fees	-35.00	-26.17
Example 22												
Account DIM Number: 86451700, Posting Date: 12/28/2009, Beginning Balance: \$393.87												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		393.87			Beginning Balance		393.87			Beginning Balance		393.87
Check (Image Only)	-437.84	-43.97	12/24/09	12:35:08	ATM Purchase	-52.96	340.91	12/24/09	12:35:08	ATM Purchase	-52.96	340.91
ATM Purchase	-75.00	-118.97	12/24/09	12:46:19	ATM Purchase	-75.00	265.91	12/24/09	12:46:19	ATM Purchase	-75.00	265.91
ATM Purchase	-52.96	-171.93	12/26/09	21:44:15	ATM Purchase	-40.00	225.91	12/26/09	21:44:15	ATM Purchase	-40.00	225.91
ATM Purchase	-40.00	-211.93			Check (Image Only)	-437.84	-211.93			Check (Image Only)	-437.84	225.91
OD Fees	-140.00	-351.93			OD Fees	-35.00	-246.93			OD Fees	0.00	225.91
NSF Fees	0.00	-351.93			NSF Fees	0.00	-246.93			NSF Fees	-35.00	190.91
Example 23												
Account DIM Number: 87777951, Posting Date: 01/19/2010, Beginning Balance: \$698.71												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		698.71			Beginning Balance		698.71			Beginning Balance		698.71
ACH Debit	-525.00	173.71	1/15/10	9:39:01	ATM Purchase	-36.42	662.29	1/15/10	09:39:01	ATM Purchase	-36.42	662.29
ATM Check Deposit Image	-150.00	23.71	1/16/10	12:34:23	ATM Purchase w/ PIN	-112.45	549.84	1/16/10	12:34:23	ATM Purchase w/ PIN	-112.45	549.84
ATM Purchase w/ PIN	-112.45	-88.74	1/16/10	16:20:13	ATM Purchase w/ PIN	-46.18	503.66	1/16/10	16:20:13	ATM Purchase w/ PIN	-46.18	503.66
ATM Purchase w/ PIN	-46.18	-134.92	1/17/10	11:55:39	ATM Purchase	-25.00	478.66	1/17/10	11:55:39	ATM Purchase	-25.00	478.66
ATM Purchase	-45.11	-180.03	1/17/10	18:18:01	ATM Purchase	-45.11	433.55	1/17/10	18:18:01	ATM Purchase	-45.11	433.55
ATM Purchase	-36.42	-216.45			ACH Debit	-525.00	-91.45			ACH Debit	-525.00	-91.45
ATM Purchase	-25.00	-241.45			ATM Check Deposit Image	-150.00	-241.45			ATM Check Deposit Image	-150.00	-91.45
OD Fees	-175.00	-416.45			OD Fees	-70.00	-311.45			OD Fees	-35.00	-126.45
NSF Fees	0.00	-416.45			NSF Fees	0.00	-311.45			NSF Fees	-35.00	-161.45

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 24												
Account DIM Number: 93987256, Posting Date: 12/29/2009, Beginning Balance: \$134.76												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		134.76			Beginning Balance		134.76			Beginning Balance		134.76
Check (Image Only)	-219.41	-84.65	12/27/09	14:10:58	ATM Purchase	-28.15	106.61	12/27/09	14:10:58	ATM Purchase	-28.15	106.61
ACH Check Debit	-48.85	-133.50	12/28/09	23:13:17	ATM Purchase	-1.89	104.72	12/28/09	23:13:17	ATM Purchase	-1.89	104.72
Check (Image Only)	-46.12	-179.62			Check (Image Only)	-219.41	-114.69			Check (Image Only)	-219.41	-114.69
Check (Image Only)	-42.45	-222.07			ACH Check Debit	-48.85	-163.54			ACH Check Debit	-48.85	-163.54
ACH Debit	-30.00	-252.07			Check (Image Only)	-46.12	-209.66			Check (Image Only)	-46.12	-209.66
ATM Purchase	-28.15	-280.22			Check (Image Only)	-42.45	-252.11			Check (Image Only)	-42.45	-252.11
ATM Purchase	-1.89	-282.11			ACH Debit	-30.00	-282.11			ACH Debit	-30.00	-252.11
OD Fees	-210.00	-492.11			OD Fees	-175.00	-457.11			OD Fees	-140.00	-392.11
NSF Fees	0.00	-492.11			NSF Fees	0.00	-457.11			NSF Fees	-35.00	-427.11
Example 25												
Account DIM Number: 93987256, Posting Date: 01/06/2010, Beginning Balance: \$2,292.62												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		2,292.62			Beginning Balance		2,292.62			Beginning Balance		2,292.62
ACH Debit	-1,684.00	608.62	1/4/10	14:23:03	ATM Purchase	-37.27	2,255.35	1/4/10	14:23:03	ATM Purchase	-37.27	2,255.35
Check (Image Only)	-600.00	8.62	1/4/10	15:40:07	ATM Purchase	-16.00	2,239.35	1/4/10	15:40:07	ATM Purchase	-16.00	2,239.35
Check (Image Only)	-91.50	-82.88			ACH Debit	-1,684.00	555.35			ACH Debit	-1,684.00	555.35
ATM Purchase	-37.27	-120.15			Check (Image Only)	-600.00	-44.65			Check (Image Only)	-600.00	-44.65
ACH Debit	-19.97	-120.15			Check (Image Only)	-91.50	-136.15			Check (Image Only)	-91.50	-44.65
ATM Purchase	-16.00	-136.15								ACH Debit	-19.97	-64.62
OD Fees	-105.00	-241.15			OD Fees	-70.00	-206.15			OD Fees	-70.00	-134.62
NSF Fees	-35.00	-276.15			NSF Fees	-35.00	-241.15			NSF Fees	-35.00	-169.62
Not-posted Transactions												
					ACH Debit	-19.97						
Example 26												
Account DIM Number: 94529499, Posting Date: 01/25/2010, Beginning Balance: \$206.60												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		206.60			Beginning Balance		206.60			Beginning Balance		206.60
ACH Debit	-213.46	-6.86	1/22/10	11:01:55	ATM Purchase	-34.00	172.60	1/22/10	11:01:55	ATM Purchase	-34.00	172.60
Check (Image Only)	-108.42	-115.28	1/22/10	19:44:13	ATM Withdrawal	-20.00	152.60	1/22/10	19:44:13	ATM Withdrawal	-20.00	152.60
Check (Image Only)	-89.95	-205.23	1/23/10	14:41:37	ATM Withdrawal	-40.00	112.60	1/23/10	14:41:37	ATM Withdrawal	-40.00	112.60
ATM Withdrawal	-40.00	-245.23	1/23/10	17:01:27	ATM Purchase w/ PIN	-10.03	102.57	1/23/10	17:01:27	ATM Purchase w/ PIN	-10.03	102.57
ATM Purchase	-34.00	-279.23			ACH Debit	-213.46	-110.89			ACH Debit	-213.46	-110.89
ATM Withdrawal	-20.00	-299.23			Check (Image Only)	-108.42	-219.31			Check (Image Only)	-108.42	-219.31
ATM Purchase w/ PIN	-10.03	-309.26			Check (Image Only)	-89.95	-309.26			Check (Image Only)	-89.95	-219.31
OD Fees	-210.00	-519.26			OD Fees	-105.00	-414.26			OD Fees	-70.00	-289.31
NSF Fees	0.00	-519.26			NSF Fees	0.00	-414.26			NSF Fees	-35.00	-324.31

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 27												
Account DIM Number: 94683693, Posting Date: 12/24/2009, Beginning Balance: \$767.06												
The daily OD limit value: \$1,000.00, the available ODP funds: \$0.00												
Beginning Balance		767.06			Beginning Balance		767.06			Beginning Balance		767.06
ATM Return	15.89	782.95			ATM Return	15.89	782.95			ATM Return	15.89	782.95
Check (Image Only)	-1,500.00	-717.05	12/22/09	10:18:40	ATM Purchase	-30.00	752.95	12/22/09	10:18:40	ATM Purchase	-30.00	752.95
ACH Debit	-245.35	-962.40	12/22/09	16:56:27	ATM Purchase	-37.51	715.44	12/22/09	16:56:27	ATM Purchase	-37.51	715.44
Check	-160.00	-962.40	12/23/09	17:13:29	ATM Purchase	-33.19	682.25	12/23/09	17:13:29	ATM Purchase	-33.19	682.25
ATM Purchase w/ PIN	-132.14	-1,094.54	12/23/09	20:46:38	ATM Purchase w/ PIN	-29.67	652.58	12/23/09	20:46:38	ATM Purchase w/ PIN	-29.67	652.58
ATM Purchase	-37.51	-1,132.05	12/23/09	21:10:00	ATM Purchase w/ PIN	-132.14	520.44	12/23/09	21:10:00	ATM Purchase w/ PIN	-132.14	520.44
Check (Image Only)	-35.00	-1,132.05	12/23/09	21:34:00	ATM Purchase w/ PIN	-31.21	489.23	12/23/09	21:34:00	ATM Purchase w/ PIN	-31.21	489.23
ATM Purchase	-33.19	-1,165.24			Check (Image Only)	-1,500.00	-1,010.77			Check (Image Only)	-1,500.00	489.23
ATM Purchase w/ PIN	-31.21	-1,196.45			ACH Debit	-245.35	-1,256.12			ACH Debit	-245.35	243.88
ATM Purchase	-30.00	-1,226.45								Check	-160.00	83.88
ATM Purchase w/ PIN	-29.67	-1,256.12								Check (Image Only)	-35.00	48.88
OD Fees	-140.00	-1,396.12			OD Fees	-70.00	-1,326.12			OD Fees	0.00	48.88
NSF Fees	-70.00	-1,466.12			NSF Fees	-70.00	-1,396.12			NSF Fees	-35.00	13.88
Not-posted Transactions												
Check -160.00												
Check (Image Only) -35.00												
Example 28												
Account DIM Number: 94683693, Posting Date: 01/08/2010, Beginning Balance: \$605.84												
The daily OD limit value: \$1,000.00, the available ODP funds: \$0.00												
Beginning Balance		605.84			Beginning Balance		605.84			Beginning Balance		605.84
ACH Deposit	160.01	765.85			ACH Deposit	160.01	765.85			ACH Deposit	160.01	765.85
Check (Image Only)	-1,500.00	-734.15	1/5/10	17:56:40	ATM Purchase	-12.33	753.52	1/5/10	17:56:40	ATM Purchase	-12.33	753.52
ATM Withdrawal	-300.00	-1,034.15	1/7/10	8:23:36	ATM Purchase	-38.28	715.24	1/7/10	08:23:36	ATM Purchase	-38.28	715.24
ACH Debit	-71.79	-1,034.15	1/7/10	22:05:29	ATM Purchase	-4.66	710.58	1/7/10	22:05:29	ATM Purchase	-4.66	710.58
ACH Debit	-39.46	-1,034.15	1/8/10	11:51:26	ATM Withdrawal	-300.00	410.58	1/8/10	11:51:26	ATM Withdrawal	-300.00	410.58
ATM Purchase	-38.28	-1,072.43			Check (Image Only)	-1,500.00	-1,089.42			Check (Image Only)	-1,500.00	410.58
ATM Purchase	-12.33	-1,084.76								ACH Debit	-71.79	338.79
ATM Purchase	-4.66	-1,089.42								ACH Debit	-39.46	299.33
OD Fees	-140.00	-1,229.42			OD Fees	-35.00	-1,124.42			OD Fees	0.00	299.33
NSF Fees	-70.00	-1,299.42			NSF Fees	-70.00	-1,194.42			NSF Fees	-35.00	264.33
Not-posted Transactions												
ACH Debit -71.79												
ACH Debit -39.46												

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 29												
Account DIM Number: 108066840, Posting Date: 12/03/2009, Beginning Balance: \$109.23												
The daily OD limit value: \$0.00, the available ODP funds: \$0.00												
Beginning Balance		109.23			Beginning Balance		109.23			Beginning Balance		109.23
ACH Deposit	343.00	452.23			ACH Deposit	704.00	813.23			ACH Deposit	704.00	813.23
ACH Deposit	704.00	1,156.23			ACH Deposit	343.00	1,156.23			ACH Deposit	343.00	1,156.23
Withdrawal (Image Only)	-620.00	536.23	12/1/09	6:00:50	ATM Purchase	-41.68	1,114.55	12/1/09	06:00:50	ATM Purchase	-41.68	1,114.55
Check (Image Only)	-216.73	319.50	12/2/09	10:28:03	ATM Purchase	-33.90	1,080.65	12/2/09	10:28:03	ATM Purchase	-33.90	1,080.65
ACH Debit	-90.00	229.50	12/2/09	10:31:02	ATM Purchase	-10.59	1,070.06	12/2/09	10:31:02	ATM Purchase	-10.59	1,070.06
ACH Debit	-60.00	169.50		11:49:52	Withdrawal (Image Only)	-620.00	450.06		11:49:52	Withdrawal (Image Only)	-620.00	450.06
ACH Debit	-50.00	119.50			Check (Image Only)	-216.73	233.33			Check (Image Only)	-216.73	233.33
ATM Purchase	-41.68	77.82			ACH Debit	-90.00	143.33			ACH Debit	-90.00	143.33
ACH Debit	-35.70	42.12			ACH Debit	-60.00	83.33			ACH Debit	-60.00	83.33
ACH Debit	-35.70	6.42			ACH Debit	-50.00	33.33			ACH Debit	-50.00	33.33
ATM Purchase	-33.90	-27.48			ACH Debit	-35.70	-2.37			ACH Debit	-35.70	33.33
ATM Purchase	-10.59	-38.07			ACH Debit	-35.70	-38.07			ACH Debit	-35.70	33.33
OD Fees	-70.00	-108.07			OD Fees	-70.00	-108.07			OD Fees	0.00	33.33
NSF Fees	0.00	-108.07			NSF Fees	0.00	-108.07			NSF Fees	-70.00	-36.67
Example 30												
Account DIM Number: 112200702, Posting Date: 01/19/2010, Beginning Balance: \$774.47												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		774.47			Beginning Balance		774.47			Beginning Balance		774.47
ATM Purchase	-388.84	385.63	1/15/10	1:20:16	ATM Purchase	-48.00	726.47	1/15/10	01:20:16	ATM Purchase	-48.00	726.47
ATM Purchase	-139.39	246.24	1/15/10	12:17:22	ATM Purchase	-139.39	587.08	1/15/10	12:17:22	ATM Purchase	-139.39	587.08
ATM Purchase	-81.03	165.21	1/15/10	12:45:06	ATM Purchase	-388.84	198.24	1/15/10	12:45:06	ATM Purchase	-388.84	198.24
ATM Purchase	-80.22	84.99	1/15/10	13:43:34	ATM Purchase	-38.13	160.11	1/15/10	13:43:34	ATM Purchase	-38.13	160.11
ATM Purchase w/ PIN	-56.29	28.70	1/15/10	13:45:05	ATM Purchase	-9.15	150.96	1/15/10	13:45:05	ATM Purchase	-9.15	150.96
ATM Purchase	-50.00	-21.30	1/15/10	14:45:54	ATM Purchase	-50.00	100.96	1/15/10	14:45:54	ATM Purchase	-50.00	100.96
ATM Purchase	-48.00	-69.30	1/15/10	19:07:04	ATM Purchase	-80.22	20.74	1/15/10	19:07:04	ATM Purchase	-80.22	20.74
Check (Image Only)	-47.58	-116.88	1/15/10	19:20:31	ATM Purchase	-29.50	-8.76	1/15/10	19:20:31	ATM Purchase	-29.50	-8.76
ATM Purchase	-38.13	-155.01	1/15/10	19:47:56	ATM Purchase	-29.17	-37.93	1/15/10	19:47:56	ATM Purchase	-29.17	-37.93
ATM Purchase	-29.50	-184.51	1/16/10	9:01:52	ATM Purchase w/ PIN	-56.29	-94.22	1/16/10	09:01:52	ATM Purchase w/ PIN	-56.29	-94.22
ATM Purchase	-29.33	-213.84	1/16/10	16:35:40	ATM Purchase	-16.23	-110.45	1/16/10	16:35:40	ATM Purchase	-16.23	-110.45
ATM Purchase	-29.17	-243.01	1/16/10	20:21:17	ATM Purchase	-23.65	-134.10	1/16/10	20:21:17	ATM Purchase	-23.65	-134.10
ATM Purchase	-23.65	-266.66	1/16/10	21:31:53	ATM Purchase	-81.03	-215.13	1/16/10	21:31:53	ATM Purchase	-81.03	-215.13
ATM Purchase	-16.23	-282.89	1/17/10	14:43:07	ATM Purchase	-29.33	-244.46	1/17/10	14:43:07	ATM Purchase	-29.33	-244.46
ATM Purchase	-12.49	-295.38	1/17/10	17:11:33	ATM Purchase	-12.49	-256.95	1/17/10	17:11:33	ATM Purchase	-12.49	-256.95
ATM Purchase	-10.27	-305.65	1/17/10	20:02:50	ATM Purchase	-10.27	-267.22	1/17/10	20:02:50	ATM Purchase	-10.27	-267.22
ATM Purchase	-9.15	-314.80			Check (Image Only)	-47.58	-314.80			Check (Image Only)	-47.58	-267.22
OD Fees	-210.00	-524.80			OD Fees	-210.00	-524.80			OD Fees	-210.00	-477.22
NSF Fees	0.00	-524.80			NSF Fees	0.00	-524.80			NSF Fees	0.00	-477.22

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 31												
Account DIM Number: 112428210, Posting Date: 12/07/2009, Beginning Balance: \$580.31												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		580.31			Beginning Balance		580.31			Beginning Balance		580.31
ACH Debit	-450.00	130.31	12/4/09	7:19:20	ATM Purchase	-61.61	518.70	12/4/09	07:19:20	ATM Purchase	-61.61	518.70
ACH Check Debit	-166.39	-36.08	12/4/09	7:24:15	ATM Purchase	-61.65	457.05	12/4/09	07:24:15	ATM Purchase	-61.65	457.05
ATM Purchase	-61.65	-97.73	12/4/09	12:10:38	ATM Purchase	-17.50	439.55	12/4/09	12:10:38	ATM Purchase	-17.50	439.55
ATM Purchase	-61.61	-159.34	12/4/09	15:27:26	ATM Purchase	-25.95	413.60	12/4/09	15:27:26	ATM Purchase	-25.95	413.60
ATM Purchase w/ PIN	-61.08	-220.42	12/4/09	17:24:27	ATM Purchase w/ PIN	-61.08	352.52	12/4/09	17:24:27	ATM Purchase w/ PIN	-61.08	352.52
ATM Purchase	-25.95	-246.37			ACH Debit	-450.00	-97.48			ACH Debit	-450.00	-97.48
ATM Purchase	-17.50	-263.87			ACH Check Debit	-166.39	-263.87			ACH Check Debit	-166.39	-97.48
OD Fees	-210.00	-473.87			OD Fees	-70.00	-333.87			OD Fees	-35.00	-132.48
NSF Fees	0.00	-473.87			NSF Fees	0.00	-333.87			NSF Fees	-35.00	-167.48
Example 32												
Account DIM Number: 112428210, Posting Date: 12/21/2009, Beginning Balance: \$7.30												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		7.30			Beginning Balance		7.30			Beginning Balance		7.30
ACH Debit	-450.00	7.30	12/18/09	5:26:45	ATM Purchase	-64.08	-56.78	12/18/09	05:26:45	ATM Purchase	-64.08	-56.78
ACH Check Debit	-166.81	-159.51			ACH Check Debit	-166.81	-328.59			ACH Debit	-450.00	-56.78
ATM Purchase	-64.08	-223.59								ACH Check Debit	-166.81	-56.78
OD Fees	-70.00	-293.59			OD Fees	-70.00	-398.59			OD Fees	-35.00	-91.78
NSF Fees	-35.00	-328.59			NSF Fees	-35.00	-433.59			NSF Fees	-70.00	-161.78
Not-posted Transactions												
					ACH Debit	-450.00						
Example 33												
Account DIM Number: 112428210, Posting Date: 01/04/2010, Beginning Balance: \$130.76												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		130.76			Beginning Balance		130.76			Beginning Balance		130.76
Check (Image Only)	-255.00	-124.24	12/31/09	3:29:45	ATM Purchase	-21.34	109.42	12/31/09	03:29:45	ATM Purchase	-21.34	109.42
ATM Purchase	-143.00	-267.24	12/31/09	3:29:45	ATM Purchase	-21.34	88.08	12/31/09	03:29:45	ATM Purchase	-21.34	88.08
ATM Purchase	-25.95	-293.19	1/1/10	3:46:44	ATM Purchase	-25.95	62.13	1/1/10	03:46:44	ATM Purchase	-25.95	62.13
ATM Purchase	-21.34	-314.53	1/2/10	11:55:14	ATM Purchase	-143.00	-80.87	1/2/10	11:55:14	ATM Purchase	-143.00	-80.87
ATM Purchase	-21.34	-335.87			Check (Image Only)	-255.00	-335.87			Check (Image Only)	-255.00	-80.87
OD Fees	-175.00	-510.87			OD Fees	-70.00	-405.87			OD Fees	-35.00	-115.87
NSF Fees	0.00	-510.87			NSF Fees	0.00	-405.87			NSF Fees	-35.00	-150.87

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 34												
Account DIM Number: 115085894, Posting Date: 11/23/2009, Beginning Balance: \$-526.45												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		-526.45			Beginning Balance		-526.45			Beginning Balance		-526.45
Deposit (Image only)	500.00	-26.45			Deposit (Image only)	500.00	-26.45			Deposit (Image only)	500.00	-26.45
Check (Image Only)	-170.00	-196.45	11/19/09	7:08:42	ATM Purchase	-66.50	-92.95	11/19/09	07:08:42	ATM Purchase	-66.50	-92.95
Check (Image Only)	-100.00	-196.45	11/19/09	18:29:15	ATM Purchase	-20.66	-113.61	11/19/09	18:29:15	ATM Purchase	-20.66	-113.61
ATM Purchase	-66.50	-262.95	11/20/09	15:26:44	ATM Purchase	-18.38	-131.99	11/20/09	15:26:44	ATM Purchase	-18.38	-131.99
ATM Purchase	-20.66	-283.61			Check (Image Only)	-170.00	-301.99			Check (Image Only)	-170.00	-131.99
ATM Purchase	-18.38	-301.99								Check (Image Only)	-100.00	-231.99
OD Fees	-140.00	-441.99			OD Fees	-140.00	-441.99			OD Fees	-140.00	-371.99
NSF Fees	-35.00	-476.99			NSF Fees	-35.00	-476.99			NSF Fees	-35.00	-406.99
Not-posted Transactions												
					Check (Image Only)	-100.00						

Example 35												
Account DIM Number: 115429904, Posting Date: 01/19/2010, Beginning Balance: \$2,374.67												
The daily OD limit value: \$1,000.00, the available ODP funds: \$0.00												
Beginning Balance		2,374.67			Beginning Balance		2,374.67			Beginning Balance		2,374.67
Deposit (Image only)	50.00	2,424.67			Deposit (Image only)	50.00	2,424.67			Deposit (Image only)	50.00	2,424.67
Check (Image Only)	-1,774.00	650.67	1/16/10	15:52:31	ATM Purchase	-45.43	2,379.24	1/16/10	15:52:31	ATM Purchase	-45.43	2,379.24
Check (Image Only)	-1,112.00	-461.33	1/17/10	14:10:34	ATM Purchase	-26.61	2,352.63	1/17/10	14:10:34	ATM Purchase	-26.61	2,352.63
Pre-authorized Payment	-500.00	-961.33			Check (Image Only)	-1,774.00	578.63			Check (Image Only)	-1,774.00	578.63
ACH Debit	-243.00	-961.33			Check (Image Only)	-1,112.00	-533.37			Check (Image Only)	-1,112.00	-533.37
ATM Purchase	-45.43	-1,006.76			Pre-authorized Payment	-500.00	-1,033.37			Pre-authorized Payment	-500.00	-533.37
ATM Purchase	-26.61	-1,033.37								ACH Debit	-243.00	-776.37
OD Fees	-128.00	-1,161.37			OD Fees	-64.00	-1,097.37			OD Fees	-64.00	-840.37
NSF Fees	-32.00	-1,193.37			NSF Fees	-32.00	-1,129.37			NSF Fees	-32.00	-872.37
Not-posted Transactions												
					ACH Debit	-243.00						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 36												
Account DIM Number: 115962752, Posting Date: 01/04/2010, Beginning Balance: \$909.70												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		909.70			Beginning Balance		909.70			Beginning Balance		909.70
ATM Withdrawal Fee	-2.00	907.70			ATM Withdrawal Fee	-2.00	907.70			ATM Withdrawal Fee	-2.00	907.70
ATM Withdrawal Fee	-2.00	905.70			ATM Withdrawal Fee	-2.00	905.70			ATM Withdrawal Fee	-2.00	905.70
ATM Purchase w/ PIN	-311.95	593.75	12/31/09	13:03:00	ATM Purchase w/ PIN	-149.95	755.75	12/31/09	13:03:00	ATM Purchase w/ PIN	-149.95	755.75
ATM Withdrawal	-204.00	389.75	1/1/10	22:08:29	ATM Purchase	-27.51	728.24	1/1/10	22:08:29	ATM Purchase	-27.51	728.24
ACH Debit	-173.12	216.63	1/2/10	13:52:21	ATM Purchase with Cash Back	-39.37	688.87	1/2/10	13:52:21	ATM Purchase with Cash Back	-39.37	688.87
ATM Purchase w/ PIN	-149.95	66.68	1/2/10	19:29:12	ATM Purchase	-13.67	675.20	1/2/10	19:29:12	ATM Purchase	-13.67	675.20
ATM Withdrawal	-104.00	-37.32	1/3/10	11:59:42	ATM Withdrawal	-104.00	571.20	1/3/10	11:59:42	ATM Withdrawal	-104.00	571.20
Check (Image Only)	-68.58	-37.32	1/3/10	15:32:22	ATM Withdrawal	-204.00	367.20	1/3/10	15:32:22	ATM Withdrawal	-204.00	367.20
ATM Purchase with Cash Back	-39.37	-76.69	1/3/10	16:27:07	ATM Purchase w/ PIN	-311.95	55.25	1/3/10	16:27:07	ATM Purchase w/ PIN	-311.95	55.25
ATM Purchase	-27.51	-104.20			ACH Debit	-173.12	-117.87			ACH Debit	-173.12	55.25
ATM Purchase	-13.67	-117.87								Check (Image Only)	-68.58	-13.33
Check (Image Only)	-10.00	-117.87								Check (Image Only)	-10.00	-23.33
OD Fees	-140.00	-257.87			OD Fees	-35.00	-152.87			OD Fees	-70.00	-93.33
NSF Fees	-70.00	-327.87			NSF Fees	-70.00	-222.87			NSF Fees	-35.00	-128.33
Not-posted Transactions												
					Check (Image Only)	-68.58						
					Check (Image Only)	-10.00						
Example 37												
Account DIM Number: 116805550, Posting Date: 01/20/2010, Beginning Balance: \$942.90												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		942.90			Beginning Balance		942.90			Beginning Balance		942.90
Check (Image Only)	-1,158.98	-216.08	1/19/10	15:37:46	ATM Purchase	-132.41	810.49	1/19/10	15:37:46	ATM Purchase	-132.41	810.49
ATM Purchase	-132.41	-348.49	1/19/10	21:45:34	ATM Purchase	-11.00	799.49	1/19/10	21:45:34	ATM Purchase	-11.00	799.49
ACH Debit	-86.22	-348.49			Check (Image Only)	-1,158.98	-359.49			Check (Image Only)	-1,158.98	799.49
ATM Purchase	-11.00	-359.49								ACH Debit	-86.22	713.27
OD Fees	-105.00	-464.49			OD Fees	-35.00	-394.49			OD Fees	0.00	713.27
NSF Fees	-35.00	-499.49			NSF Fees	-35.00	-429.49			NSF Fees	-35.00	678.27
Not-posted Transactions												
					ACH Debit	-86.22						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 38												
Account DIM Number: 117995601, Posting Date: 12/01/2009, Beginning Balance: \$-293.28												
The daily OD limit value: \$700.00, the available ODP funds: \$0.00												
Beginning Balance		-293.28			Beginning Balance		-293.28			Beginning Balance		-293.28
ACH Check Debit	-224.27	-517.55	11/29/09	19:05:07	ATM Purchase	-20.30	-313.58	11/29/09	19:05:07	ATM Purchase	-20.30	-313.58
ACH Debit	-130.73	-648.28	11/29/09	21:53:56	ATM Purchase	-2.78	-316.36	11/29/09	21:53:56	ATM Purchase	-2.78	-316.36
ATM Purchase	-65.84	-714.12	11/30/09	7:21:41	ATM Purchase	-17.25	-333.61	11/30/09	07:21:41	ATM Purchase	-17.25	-333.61
ATM Purchase	-54.31	-768.43	11/30/09	17:30:15	ATM Purchase	-26.47	-360.08	11/30/09	17:30:15	ATM Purchase	-26.47	-360.08
ACH Check Debit	-44.68	-768.43	11/30/09	18:25:18	ATM Purchase	-65.84	-425.92	11/30/09	18:25:18	ATM Purchase	-65.84	-425.92
ATM Purchase	-26.47	-794.90	11/30/09	19:01:49	ATM Purchase	-54.31	-480.23	11/30/09	19:01:49	ATM Purchase	-54.31	-480.23
ATM Purchase	-20.30	-815.20			ACH Check Debit	-224.27	-704.50			ACH Check Debit	-224.27	-480.23
ATM Purchase	-17.25	-832.45			ACH Debit	-130.73	-835.23			ACH Debit	-130.73	-610.96
ATM Purchase	-2.78	-835.23								ACH Check Debit	-44.68	-655.64
OD Fees	-175.00	-1,010.23			OD Fees	-210.00	-1,045.23			OD Fees	-210.00	-865.64
NSF Fees	-35.00	-1,045.23			NSF Fees	0.00	-1,045.23			NSF Fees	0.00	-865.64

Not-posted Transactions

ACH Check Debit	-44.68
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Example 39												
Account DIM Number: 123375626, Posting Date: 01/19/2010, Beginning Balance: \$540.94												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		540.94			Beginning Balance		540.94			Beginning Balance		540.94
ACH Debit	-447.50	93.44	1/15/10	8:44:34	ATM Purchase	-26.63	514.31	1/15/10	08:44:34	ATM Purchase	-26.63	514.31
ATM Withdrawal	-200.00	-106.56	1/15/10	12:13:10	ATM Purchase	-11.08	503.23	1/15/10	12:13:10	ATM Purchase	-11.08	503.23
ACH Debit	-80.00	-106.56	1/15/10	16:33:05	ATM Purchase	-10.00	493.23	1/15/10	16:33:05	ATM Purchase	-10.00	493.23
ATM Purchase	-26.63	-133.19	1/15/10	17:03:42	ATM Purchase	-20.00	473.23	1/15/10	17:03:42	ATM Purchase	-20.00	473.23
ATM Purchase	-23.16	-156.35	1/16/10	14:06:28	ATM Purchase	-23.16	450.07	1/16/10	14:06:28	ATM Purchase	-23.16	450.07
ATM Purchase	-20.00	-176.35	1/16/10	18:34:42	ATM Purchase	-18.00	432.07	1/16/10	18:34:42	ATM Purchase	-18.00	432.07
ATM Purchase	-18.00	-194.35	1/17/10	14:28:04	ATM Withdrawal	-200.00	232.07	1/17/10	14:28:04	ATM Withdrawal	-200.00	232.07
ATM Purchase	-11.08	-205.43			ACH Debit	-447.50	-215.43			ACH Debit	-447.50	232.07
ATM Purchase	-10.00	-215.43								ACH Debit	-80.00	152.07
OD Fees	-175.00	-390.43			OD Fees	-35.00	-250.43			OD Fees	0.00	152.07
NSF Fees	-35.00	-425.43			NSF Fees	-35.00	-285.43			NSF Fees	-35.00	117.07

Not-posted Transactions

ACH Debit	-80.00
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- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 40												
Account DIM Number: 124249898, Posting Date: 12/21/2009, Beginning Balance: \$3,314.05												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		3,314.05			Beginning Balance		3,314.05			Beginning Balance		3,314.05
ACH Debit	-2,058.82	1,255.23	12/18/09	1:35:02	ATM Purchase	-85.27	3,228.78	12/18/09	01:35:02	ATM Purchase	-85.27	3,228.78
ATM Withdrawal	-503.00	752.23	12/18/09	14:34:09	ATM Purchase	-318.50	2,910.28	12/18/09	14:34:09	ATM Purchase	-318.50	2,910.28
ACH Debit	-400.00	352.23	12/20/09	16:52:35	ATM Withdrawal	-503.00	2,407.28	12/20/09	16:52:35	ATM Withdrawal	-503.00	2,407.28
ACH Debit	-395.08	-42.85			ACH Debit	-2,058.82	348.46			ACH Debit	-2,058.82	348.46
ATM Purchase	-318.50	-361.35			ACH Debit	-400.00	-51.54			ACH Debit	-400.00	-51.54
ATM Purchase	-85.27	-446.62			ACH Debit	-395.08	-446.62			ACH Debit	-395.08	-51.54
ACH Debit	-20.00	-446.62								ACH Debit	-20.00	-71.54
OD Fees	-105.00	-551.62			OD Fees	-70.00	-516.62			OD Fees	-70.00	-141.54
NSF Fees	-35.00	-586.62			NSF Fees	-35.00	-551.62			NSF Fees	-35.00	-176.54
Not-posted Transactions												
					ACH Debit	-20.00						

Example 41												
Account DIM Number: 124249898, Posting Date: 01/04/2010, Beginning Balance: \$4,040.87												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		4,040.87			Beginning Balance		4,040.87			Beginning Balance		4,040.87
ATM Return	251.39	4,292.26			ATM Return	251.39	4,292.26			ATM Return	251.39	4,292.26
ACH Debit	-2,058.82	2,233.44	12/31/09	4:48:00	ATM Purchase	-35.00	4,257.26	12/31/09	04:48:00	ATM Purchase	-35.00	4,257.26
ATM Withdrawal	-723.00	1,510.44	12/31/09	4:48:00	ATM Purchase	-423.00	3,834.26	12/31/09	04:48:00	ATM Purchase	-423.00	3,834.26
ATM Withdrawal	-503.00	1,007.44	12/31/09	9:35:02	ATM Purchase	-126.70	3,707.56	12/31/09	09:35:02	ATM Purchase	-126.70	3,707.56
ACH Debit	-500.00	507.44	12/31/09	13:13:06	ATM Purchase	-28.06	3,679.50	12/31/09	13:13:06	ATM Purchase	-28.06	3,679.50
ATM Purchase	-423.00	84.44	12/31/09	17:21:48	ATM Withdrawal	-503.00	3,176.50	12/31/09	17:21:48	ATM Withdrawal	-503.00	3,176.50
ACH Debit	-422.51	84.44	1/1/10	12:42:42	ATM Withdrawal	-723.00	2,453.50	1/1/10	12:42:42	ATM Withdrawal	-723.00	2,453.50
ACH Debit	-259.96	-175.52			ACH Debit	-2,058.82	394.68			ACH Debit	-2,058.82	394.68
ACH Debit	-126.75	-175.52			ACH Debit	-500.00	-105.32			ACH Debit	-500.00	-105.32
ATM Purchase	-126.70	-302.22			ACH Debit	-259.96	-365.28			ACH Debit	-422.51	-105.32
ACH Debit	-94.24	-302.22								ACH Debit	-259.96	-105.32
ATM Purchase	-35.00	-337.22								ACH Debit	-126.75	-232.07
ATM Purchase	-28.06	-365.28								ACH Debit	-94.24	-232.07
OD Fees	-105.00	-470.28			OD Fees	-70.00	-435.28			OD Fees	-70.00	-302.07
NSF Fees	-105.00	-575.28			NSF Fees	-105.00	-540.28			NSF Fees	-105.00	-407.07
Not-posted Transactions												
					ACH Debit	-422.51						
					ACH Debit	-126.75						
					ACH Debit	-94.24						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 42 Account DIM Number: 147475731, Posting Date: 01/04/2010, Beginning Balance: \$820.10 The daily OD limit value: \$60.00, the available ODP funds: \$0.00												
Beginning Balance		820.10			Beginning Balance		820.10			Beginning Balance		820.10
ACH Debit	-600.00	220.10	1/1/10	2:12:11	ATM Purchase	-50.03	770.07	1/1/10	02:12:11	ATM Purchase	-50.03	770.07
ACH Debit	-225.28	-5.18	1/1/10	4:56:32	ATM Purchase	-10.00	760.07	1/1/10	04:56:32	ATM Purchase	-10.00	760.07
ATM Purchase	-50.03	-55.21			ACH Debit	-600.00	160.07			ACH Debit	-600.00	160.07
ACH Debit	-10.00	-55.21			ACH Debit	-225.28	-65.21			ACH Debit	-225.28	160.07
ATM Purchase	-10.00	-65.21								ACH Debit	-10.00	150.07
OD Fees	-105.00	-170.21			OD Fees	-35.00	-100.21			OD Fees	0.00	150.07
NSF Fees	-35.00	-205.21			NSF Fees	-35.00	-135.21			NSF Fees	-35.00	115.07
					Not-posted Transactions							
					ACH Debit	-10.00						
Example 43 Account DIM Number: 156705065, Posting Date: 12/04/2009, Beginning Balance: \$-634.11 The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		-634.11			Beginning Balance		-634.11			Beginning Balance		-634.11
ACH Deposit	483.85	-150.26			ACH Deposit	483.85	-150.26			ACH Deposit	483.85	-150.26
ACH Debit	-22.50	-172.76	12/2/09	21:10:21	ATM Purchase	-11.40	-161.66	12/2/09	21:10:21	ATM Purchase	-11.40	-161.66
ACH Debit	-15.00	-172.76			ACH Debit	-22.50	-184.16			ACH Debit	-22.50	-161.66
ATM Purchase	-11.40	-184.16								ACH Debit	-15.00	-176.66
OD Fees	-70.00	-254.16			OD Fees	-70.00	-254.16			OD Fees	-70.00	-246.66
NSF Fees	-35.00	-289.16			NSF Fees	-35.00	-289.16			NSF Fees	-35.00	-281.66
					Not-posted Transactions							
					ACH Debit	-15.00						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 44												
Account DIM Number: 180726722, Posting Date: 01/19/2010, Beginning Balance: \$976.75												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		976.75			Beginning Balance		976.75			Beginning Balance		976.75
ATM Check Deposit	50.00	1,026.75			ATM Check Deposit	50.00	1,026.75			ATM Check Deposit	50.00	1,026.75
ACH Debit	-735.00	291.75	1/15/10	17:44:33	ATM Withdrawal	-200.00	826.75	1/15/10	17:44:33	ATM Withdrawal	-200.00	826.75
ATM Withdrawal	-500.00	-208.25	1/17/10	10:09:59	ATM Withdrawal	-40.00	786.75	1/17/10	10:09:59	ATM Withdrawal	-40.00	786.75
ATM Withdrawal	-200.00	-408.25	1/17/10	15:03:20	ATM Purchase	-51.86	734.89	1/17/10	15:03:20	ATM Purchase	-51.86	734.89
ATM Purchase	-51.86	-460.11	1/17/10	15:19:12	ATM Purchase	-7.00	727.89	1/17/10	15:19:12	ATM Purchase	-7.00	727.89
ATM Withdrawal	-40.00	-500.11	1/18/10	14:19:28	ATM Withdrawal	-500.00	227.89	1/18/10	14:19:28	ATM Withdrawal	-500.00	227.89
ATM Purchase	-7.00	-507.11			ACH Debit	-735.00	-507.11			ACH Debit	-735.00	227.89
ACH Debit	-1.75	-507.11								ACH Debit	-1.75	226.14
OD Fees	-175.00	-682.11			OD Fees	-35.00	-542.11			OD Fees	0.00	226.14
NSF Fees	-35.00	-717.11			NSF Fees	-35.00	-577.11			NSF Fees	-35.00	191.14
Not-posted Transactions												
					ACH Debit	-1.75						
Example 45												
Account DIM Number: 182416977, Posting Date: 12/03/2009, Beginning Balance: \$-491.56												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		-491.56			Beginning Balance		-491.56			Beginning Balance		-491.56
Deposit (Image only)	192.00	-299.56			Deposit (Image only)	192.00	-299.56			Deposit (Image only)	192.00	-299.56
ACH Deposit	235.97	-63.59			ACH Deposit	235.97	-63.59			ACH Deposit	235.97	-63.59
Check (Image Only)	-245.49	-63.59	12/1/09	5:15:04	ATM Purchase	-60.59	-124.18	12/1/09	05:15:04	ATM Purchase	-60.59	-124.18
Check (Image Only)	-160.00	-223.59	12/2/09	17:30:18	ATM Purchase w/ PIN	-43.32	-167.50	12/2/09	17:30:18	ATM Purchase w/ PIN	-43.32	-167.50
Check (Image Only)	-102.60	-223.59			Check (Image Only)	-160.00	-327.50			Check (Image Only)	-245.49	-167.50
ATM Purchase	-60.59	-284.18								Check (Image Only)	-160.00	-167.50
ATM Purchase w/ PIN	-43.32	-327.50								Check (Image Only)	-102.60	-270.10
OD Fees	-105.00	-432.50			OD Fees	-105.00	-272.50			OD Fees	-105.00	-375.10
NSF Fees	-70.00	-502.50			NSF Fees	-70.00	-342.50			NSF Fees	-70.00	-445.10
Not-posted Transactions												
					Check (Image Only)	-245.49						
					Check (Image Only)	-102.60						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 46												
Account DIM Number: 184115119, Posting Date: 11/23/2009, Beginning Balance: \$183.93												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		183.93			Beginning Balance		183.93			Beginning Balance		183.93
ATM Withdrawal Fee	-2.00	181.93			ATM Withdrawal Fee	-2.00	181.93			ATM Withdrawal Fee	-2.00	181.93
ACH Debit	-167.87	14.06	11/19/09	2:02:02	ATM Purchase	-40.00	141.93	11/19/09	02:02:02	ATM Purchase	-40.00	141.93
ATM Withdrawal	-42.50	-28.44	11/21/09	14:35:59	ATM Purchase	-30.02	111.91	11/21/09	14:35:59	ATM Purchase	-30.02	111.91
ATM Withdrawal	-41.95	-70.39	11/21/09	14:55:56	ATM Withdrawal	-41.95	69.96	11/21/09	14:55:56	ATM Withdrawal	-41.95	69.96
ATM Purchase	-40.00	-110.39	11/21/09	18:18:46	ATM Purchase	-14.04	55.92	11/21/09	18:18:46	ATM Purchase	-14.04	55.92
ATM Purchase	-30.02	-140.41	11/22/09	17:13:18	ATM Withdrawal	-42.50	13.42	11/22/09	17:13:18	ATM Withdrawal	-42.50	13.42
ATM Purchase	-14.04	-154.45			ACH Debit	-167.87	-154.45			ACH Debit	-167.87	13.42
ACH Debit	-2.95	-154.45								ACH Debit	-2.95	10.47
OD Fees	-175.00	-329.45			OD Fees	-35.00	-189.45			OD Fees	0.00	10.47
NSF Fees	-35.00	-364.45			NSF Fees	-35.00	-224.45			NSF Fees	-35.00	-24.53
Not-posted Transactions												
					ACH Debit	-2.95						
Example 47												
Account DIM Number: 223462403, Posting Date: 11/23/2009, Beginning Balance: \$921.38												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		921.38			Beginning Balance		921.38			Beginning Balance		921.38
Check (Image Only)	-1,000.00	-78.62	11/20/09	5:23:34	ATM Purchase	-58.00	863.38	11/20/09	05:23:34	ATM Purchase	-58.00	863.38
Pre-authorized Payment	-375.00	-78.62	11/20/09	5:28:54	ATM Purchase	-7.58	855.80	11/20/09	05:28:54	ATM Purchase	-7.58	855.80
ATM Purchase	-58.00	-136.62	11/20/09	23:29:40	ATM Purchase	-5.40	850.40	11/20/09	23:29:40	ATM Purchase	-5.40	850.40
ATM Purchase	-43.87	-180.49	11/21/09	0:30:14	ATM Purchase	-29.36	821.04	11/21/09	00:30:14	ATM Purchase	-29.36	821.04
ATM Purchase	-29.36	-209.85	11/21/09	7:50:18	ATM Purchase	-11.97	809.07	11/21/09	07:50:18	ATM Purchase	-11.97	809.07
ATM Purchase	-19.73	-229.58	11/21/09	7:51:58	ATM Purchase	-8.55	800.52	11/21/09	07:51:58	ATM Purchase	-8.55	800.52
ATM Purchase	-11.97	-241.55	11/21/09	17:39:35	ATM Purchase	-19.73	780.79	11/21/09	17:39:35	ATM Purchase	-19.73	780.79
ATM Purchase	-8.55	-250.10	11/21/09	17:41:07	ATM Purchase	-43.87	736.92	11/21/09	17:41:07	ATM Purchase	-43.87	736.92
ATM Purchase	-7.58	-257.68			Check (Image Only)	-1,000.00	-263.08			Check (Image Only)	-1,000.00	736.92
ATM Purchase	-5.40	-263.08								Pre-authorized Payment	-375.00	361.92
OD Fees	-175.00	-438.08			OD Fees	-35.00	-298.08			OD Fees	0.00	361.92
NSF Fees	-35.00	-473.08			NSF Fees	-35.00	-333.08			NSF Fees	-35.00	326.92
Not-posted Transactions												
					Pre-authorized Payment	-375.00						

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹					Alternative Posting ²				
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 48												
Account DIM Number: 225770620, Posting Date: 01/19/2010, Beginning Balance: \$155.86												
The daily OD limit value: \$180.00, the available ODP funds: \$0.00												
Beginning Balance		155.86			Beginning Balance		155.86			Beginning Balance		155.86
ACH Debit	-315.29	-159.43	1/15/10	21:55:38	ATM Purchase	-31.03	124.83	1/15/10	21:55:38	ATM Purchase	-31.03	124.83
ACH Debit	-107.68	-159.43	1/16/10	18:54:10	ATM Purchase	-10.00	114.83	1/16/10	18:54:10	ATM Purchase	-10.00	114.83
ATM Purchase	-31.03	-190.46			ACH Debit	-315.29	-200.46			ACH Debit	-315.29	114.83
ATM Purchase	-10.00	-200.46								ACH Debit	-107.68	7.15
OD Fees	-105.00	-305.46			OD Fees	-35.00	-235.46			OD Fees	0.00	7.15
NSF Fees	-35.00	-340.46			NSF Fees	-35.00	-270.46			NSF Fees	-35.00	-27.85
Not-posted Transactions												
ACH Debit -107.68												
Example 49												
Account DIM Number: 226809644, Posting Date: 01/19/2010, Beginning Balance: \$1,578.91												
The daily OD limit value: \$100.00, the available ODP funds: \$0.00												
Beginning Balance		1,578.91			Beginning Balance		1,578.91			Beginning Balance		1,578.91
ATM Check Deposit	25.00	1,603.91			ATM Check Deposit	25.00	1,603.91			ATM Check Deposit	25.00	1,603.91
ACH Debit	-400.00	1,203.91	1/15/10	6:52:57	ATM Purchase	-16.99	1,586.92	1/15/10	06:52:57	ATM Purchase	-16.99	1,586.92
ATM Withdrawal	-240.00	963.91	1/15/10	10:59:46	ATM Purchase	-169.95	1,416.97	1/15/10	10:59:46	ATM Purchase	-169.95	1,416.97
ACH Debit	-203.09	760.82	1/15/10	11:06:12	ATM Purchase	-83.73	1,333.24	1/15/10	11:06:12	ATM Purchase	-83.73	1,333.24
ACH Debit	-203.08	557.74	1/15/10	13:22:18	ATM Purchase	-26.67	1,306.57	1/15/10	13:22:18	ATM Purchase	-26.67	1,306.57
ATM Purchase	-169.95	387.79	1/15/10	14:21:00	ATM Purchase w/ PIN	-10.00	1,296.57	1/15/10	14:21:00	ATM Purchase w/ PIN	-10.00	1,296.57
ATM Purchase w/ PIN	-168.28	219.51	1/15/10	14:35:00	ATM Purchase w/ PIN	-109.75	1,186.82	1/15/10	14:35:00	ATM Purchase w/ PIN	-109.75	1,186.82
ATM Purchase w/ PIN	-109.75	109.76	1/15/10	16:03:00	ATM Purchase w/ PIN	-168.28	1,018.54	1/15/10	16:03:00	ATM Purchase w/ PIN	-168.28	1,018.54
ATM Purchase w/ PIN	-102.04	7.72	1/15/10	16:38:47	ATM Purchase	-1.00	1,017.54	1/15/10	16:38:47	ATM Purchase	-1.00	1,017.54
ATM Purchase	-83.73	-76.01	1/15/10	17:02:22	ATM Purchase w/ PIN	-102.04	915.50	1/15/10	17:02:22	ATM Purchase w/ PIN	-102.04	915.50
ACH Debit	-70.00	-76.01	1/15/10	17:05:33	ATM Purchase	-49.00	866.50	1/15/10	17:05:33	ATM Purchase	-49.00	866.50
ACH Debit	-55.00	-76.01	1/16/10	15:50:06	ATM Purchase	-20.43	846.07	1/16/10	15:50:06	ATM Purchase	-20.43	846.07
ATM Purchase	-49.00	-125.01	1/16/10	16:48:02	ATM Purchase	-10.00	836.07	1/16/10	16:48:02	ATM Purchase	-10.00	836.07
ATM Purchase w/ PIN	-43.05	-168.06	1/16/10	16:51:36	ATM Withdrawal	-240.00	596.07	1/16/10	16:51:36	ATM Withdrawal	-240.00	596.07
ATM Purchase	-36.62	-204.68	1/17/10	17:07:42	ATM Purchase w/ PIN	-43.05	553.02	1/17/10	17:07:42	ATM Purchase w/ PIN	-43.05	553.02
ATM Purchase	-26.67	-231.35	1/17/10	17:08:06	ATM Purchase	-36.62	516.40	1/17/10	17:08:06	ATM Purchase	-36.62	516.40
ATM Purchase	-20.43	-251.78	1/17/10	18:47:54	ATM Purchase w/ PIN	-19.43	496.97	1/17/10	18:47:54	ATM Purchase w/ PIN	-19.43	496.97
ATM Purchase w/ PIN	-19.43	-271.21			ACH Debit	-400.00	96.97			ACH Debit	-400.00	96.97
ATM Purchase	-16.99	-288.20			ACH Debit	-203.09	-106.12			ACH Debit	-203.09	96.97
ACH Debit	-15.00	-288.20			ACH Debit	-203.08	-309.20			ACH Debit	-203.08	96.97
ATM Purchase	-10.00	-298.20								ACH Debit	-70.00	26.97
ATM Purchase w/ PIN	-10.00	-308.20								ACH Debit	-55.00	-28.03
ATM Purchase	-1.00	-309.20								ACH Debit	-15.00	-43.03
OD Fees	-140.00	-449.20			OD Fees	-70.00	-379.20			OD Fees	-70.00	-113.03
NSF Fees	-70.00	-519.20			NSF Fees	-105.00	-484.20			NSF Fees	-70.00	-183.03
Not-posted Transactions												
ACH Debit -70.00												
ACH Debit -55.00												
ACH Debit -15.00												

- not posted transactions
- overdraft transactions

Original Chase Posting			Olsen Proposed Posting ¹				Alternative Posting ²					
Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance	Transaction Date	Transaction Time	Description	Amount	Ledger Balance
Example 50												
Account DIM Number: 231465587, Posting Date: 12/14/2009, Beginning Balance: \$-129.84												
The daily OD limit value: \$280.00, the available ODP funds: \$0.00												
Beginning Balance		-129.84			Beginning Balance		-129.84			Beginning Balance		-129.84
Extended OD Fee	-12.50	-142.34			Extended OD Fee	-12.50	-142.34			Extended OD Fee	-12.50	-142.34
ACH Debit	-95.00	-237.34	12/12/09	17:22:04	ATM Purchase	-74.99	-217.33	12/12/09	17:22:04	ATM Purchase	-74.99	-217.33
ATM Purchase	-74.99	-312.33			ACH Debit	-95.00	-312.33			ACH Debit	-95.00	-217.33
ACH Debit	-20.00	-312.33								ACH Debit	-20.00	-237.33
OD Fees	-70.00	-382.33			OD Fees	-70.00	-382.33			OD Fees	-70.00	-307.33
NSF Fees	-35.00	-417.33			NSF Fees	-35.00	-417.33			NSF Fees	-35.00	-342.33
Not-posted Transactions												
					ACH Debit	-20.00						

Source: JPMorgan Chase Bank, N.A.

Notes: Olsen proposed and alternative postings assume the following order of transactions:

- a. Deposits;
- b. Some fees;
- c. Debit card transactions and ATM withdrawals with time information (chronologically);
- d. Debit card transactions and ATM withdrawals without time information (low-to-high);
- e. Checks and ACH, high to low;
- d. All other transactions.

[1] Olsen proposed posting assumes that posting status does not change under new posting.

[2] Alternative posting assumes that posting status may change under new posting.

- not posted transactions
- overdraft transactions

Exhibit E



March 12, 2009

Ms, Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington DC 20551

Re: Regulation E- Limitations on fee-based automatic overdraft loan programs.

Federal Reserve Board: Regulation E: R-1343

Dear Chairman Bernanke, Members of the Board, and Board Secretary Johnson:

Consumers Union of U.S., Inc, the nonprofit publisher of *Consumer Reports*, writes to comment on proposed Regulation E – Electronic Fund Transfers [R-1343], the recent proposal to limit the ability of financial institutions to assess fees for paying ATM and one-time debit transactions that overdraw a consumer's account. Consumers Union asks the Board to adopt Alternative 2- Opt-In Approach, which will allow overdraft loan fees only if the consumer has affirmatively consented to being enrolled in a program offered by their financial institution. *Consumer Reports* National Research Center conducted a nationally representative telephone poll about common bank policies involving overdraft fees,¹ which found that many people don't expect to be charged a fee when they overdraft their account. This suggests that if Alternative 1- Opt-Out Approach is adopted, consumers will be unlikely to opt out of a program of which they are unaware. We have attached this poll as Appendix B and it provides strong evidence of consumer preferences regarding these programs.

We are glad that the Board has enhanced the proposal, by including for consideration the opt-in approach, although we feel the proposal is limited because it does not regulate overdraft coverage of checks, ACH and recurring debit payments. In our comment to the May 2008 FTC Act Proposal (incorporated as Appendix A,) we emphasized that only an affirmative opt-in requirement would provide the necessary consumer protections and we repeat this emphatically here. An opt-in approach to overdraft loan programs is the only way to ensure that consumers do not incur fees for services that detract from their personal economic stability. While we also offer suggestions to somewhat strengthen the opt-out approach, that alternative will not adequately protect consumers even with improvements. In the following sections we will highlight points discussed in our comment to the May 2008 FTC Act Proposal as well as points specific to this new proposal.

Our comments will discuss the following issues:

- The rule should provide consumers protection by prohibiting banks from assessing overdraft loan fees unless the consumer has affirmatively opted into a program. This is superior to an opt-out approach.

¹ See FINAL REGULATION POLL FINAL REPORT, *CONSUMER REPORTS* NATIONAL RESEARCH CENTER, February 13, 2009. This document is attached as- Appendix B.

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- The Board should reconsider using its authority under the FTC Act to regulate automatic fee-based overdraft loan coverage of checks, ACH payments and recurring debits.
- Fee-based overdraft loans are extensions of credit and should therefore be subject to the Truth in Lending Act requirement to disclose the cost in terms of the annual percentage rate.
- The rule should address unfair transaction clearing practices in deposit accounts, as these practices increase the number of overdrafts and result in significantly more fee income for banks.
- The Board should require implementation no later than 90 days from the date of the final rule.
- The Board should provide specific requirements in the regulatory language to ensure that consumers are given adequate time and means to invoke their opt-in or out rights.
- Payment of checks should not be conditioned upon the consumer's decision regarding overdraft loan coverage of ATM and debit transactions.
- The terms and conditions of a consumer's bank account should be identical regardless of their decision regarding overdraft coverage of ATM and debit transactions.
- If the opt-in approach is adopted, existing customers should not be assessed overdraft loan fees unless they have received notice and made an affirmative choice to sign up. Existing customers should receive the same rights as new customers.
- The rule should ban overdraft loan fees when the overdraft would not have occurred but for a funds availability hold on deposited funds.
- The Board should be aware of a potential loophole in the debit hold provision.

I. Automatic enrollment in overdraft services is unfair to consumers, even with a right to opt out. It is essential that the Board adopt the opt-in approach.

The proposal seeks comment on two alternatives for regulating automatic overdraft coverage of ATM and debit transactions; opt-in and opt-out. We applaud the Board for recognizing, in the explanatory material of the May 2008 FTC Act Proposal, that this systemic practice of enrolling consumers by default in overdraft loan programs is statutorily unfair. But as we discussed in our comment to that proposal, the purported benefits of overdraft loan programs are grossly overstated. If such programs in fact have substantial benefit to consumers, then financial institutions should have to persuade customers to sign up. Because financial institutions do not have to go through the process of selling overdraft programs to customers under an opt-out system, there is less incentive to create a product that is a good value for the consumer. The opt-out approach is insufficient because it leaves enrollment in overdraft programs (and the potential to incur high fees) as the status quo. It puts an unfair burden on the consumer to reject this service when evidence suggests that most account holders will not alter the initial

default status of their account.² Therefore we ask the Board to adopt the opt-in approach which is the only way to ensure that consumers are truly protected from fee-based programs that detract from their economic stability.

A. Consumers are generally uninformed about how banks treat debit and ATM transactions when they overdraw their accounts.

The *Consumer Reports* National Research Center poll indicates that many consumers do not understand what will happen if they attempt to use their debit or ATM card without sufficient funds in their account.³ Thirty-nine percent of people thought that their bank would either deny a debit transaction or allow it to proceed without charging a fee.⁴ This percentage increased when asked what would happen at the ATM. Forty-eight percent of those polled thought the ATM card would not work at all if the account balance were too low and another 10% thought they would not be assessed a fee if the bank allowed the withdrawal.⁵

These impressions are not in line with the FDIC's confirmation in a study released in November 2008, that "a significant share of customer transaction accounts operat[e] under automated overdraft programs,"⁶ that charge a median fee of \$27 for the service.⁷ In the FDIC's study, the large institutions that use automated programs to cover overdraft obligations accounted for almost 73% of deposit dollars held in study population banks.⁸ Yet 39% of the people polled by *Consumer Reports* National Research Center did not think they were enrolled in an automated fee-based overdraft program with regards to debit transactions and 58% had this same misconception with regard to withdrawals at the ATM.

This evidence makes clear that consumers are not aware of the fees associated with overdraft loans made on their accounts and therefore will be unlikely to opt-out of a program that assesses these fees. Automatic fee-based overdraft programs are the most expensive option, and banks do not have any incentive to sell consumers lower cost services, such as linked accounts or lines of credit. The FDIC confirmed that the fees assessed for these types of overdraft programs were significantly lower than for automatic programs.⁹

B. Consumers want to choose whether to enroll in an overdraft loan program and would rather transactions be denied than incur overdraft fees.

Consumers overwhelmingly want choice when it comes to their bank accounts. The *Consumer Reports* National Research Center poll found that two-thirds of consumers said they prefer to expressly authorize overdraft coverage, so that there would be no overdraft loan—or fee—unless and until they opted into the service.¹⁰ Similarly, two thirds of consumers polled said that banks should deny a debit card or ATM transaction if the checking account balance is too low.¹¹ Other studies have made similar findings. The Center for Responsible Lending found that 91% of respondents who were enrolled in a fee-based overdraft loan program want a

² Richard H. Thaler and Shlomo Benartzi, *Save More Tomorrow: Using Behavioral Economics to Increase Employee Saving*, 112 J. POL. ECON. 1 (2001), available at <http://faculty.chicagogsb.edu/richard.thaler/research/SMarT14.pdf>.

³ FINANCIAL REGULATION POLL, *supra* note 1. This poll was a nationally representative sample of 679 people.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ FEDERAL DEPOSIT INSURANCE CORPORATION, EXECUTIVE SUMMARY, FDIC STUDY OF BANK OVERDRAFT PROGRAMS II (2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_ExecutiveSummary_v508.pdf.

⁷ FEDERAL DEPOSIT INSURANCE CORPORATION, FDIC STUDY OF BANK OVERDRAFT PROGRAMS 15 (2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

⁸ *Id.* at 6.

⁹ FDIC, *supra* note 6, at III n.7.

¹⁰ FINANCIAL REGULATION POLL, *supra* note 1, at 8.

¹¹ *Id.* at 9.

choice about whether the program is included with their account. These same respondents overwhelmingly wanted their debit card transactions denied if the account was overdrawn.¹²

This past February, Justin from New York shared with Consumers Union his hardship with overdraft fees and expressed a desire for transactions to be denied rather than incur a fee. Here is what Justin told Consumers Union:

Since the beginning of 2008, Justin has incurred excessive overdrafts because of an arbitrary change in his bank's policy. Justin keeps two accounts separately – one for general spending, and the other for bills. He explains, "Previously, the bank would process credits prior to debits so if I went over in my spending account I could transfer money from my bills account and be covered with no overdraft charges. This has changed; now if I go over in my spending account, which I have, even if I transfer money the same day (which is immediately available), I receive an overdraft fee." Now, in addition to not being able to replenish his account immediately in order to avoid overdrafts, he is also being charged additional overdrafts as his bank chooses to debit the larger overdrafts before the smaller ones.

Justin reported that he was charged \$350 in overdrafts over a ten day period. Some of these transactions were for less than \$10, and all of them were for less than \$25. Eventually, after multiple telephone calls to the bank, Justin was refunded \$100 of his \$350 total overdraft fees. Justin told Consumers Union that he would rather have his debit card denied on transactions that would cause overdrafts. He wishes that he could choose whether the bank should cover transactions which overdraw his accounts, and he feels that "to tack on fees and change policies to increase fee income is completely intolerable."

C. For the consumers who need occasional emergency overdraft loans, there are better options.

In its discussion of the opt-in approach, the Board raises the concern that consumers who generally do not overdraw their accounts, may benefit from the occasional coverage of overdrafts and that opt-in might result in more declined transactions than these consumers would prefer.¹³ As an example, the Board introduces a hypothetical consumer who has not opted into the program, rarely overdraws the account, needs emergency funds and would like to withdraw such funds out of the ATM or make an essential purchase. Even if there are a small number of consumers who would wish to use their checking account as a credit arrangement after fully understanding the costs, these consumers are the precise population that might decide to make a choice to opt into an overdraft program.

Consumers that generally do not overdraw their account but want the option of accessing emergency funds will probably be eligible to sign up for less expensive options for covering overdrafts, such as a linked savings account, credit card or a line of credit. The FDIC found that fees for these types of accounts are significantly lower than for automatic overdraft programs.¹⁴ An opt-in rule will put overdraft loans on par with other forms of loans- which the consumer can evaluate for price before the credit is extended or any fees triggered.

¹² LESLIE PARRISH, CTR. FOR RESPONSIBLE LENDING, CONSUMERS WANT INFORMED CHOICE ON OVERDRAFT FEES AND BANKING OPTIONS 3-4 (2008), available at <http://www.responsiblelending.org/issues/overdraft/reports/consumers-want-informed-choice-on-overdraft-fees-and-banking-options.html>.

¹³ Electronic Fund Transfers, 74 Fed. Reg. 5212, 5225 (proposed Jan. 29, 2009) (to be codified at 12 C.F.R.).

¹⁴ FDIC, *supra* note 6, at III n.7.

By restricting banks from making the most expensive overdraft program the default, the Board will be protecting the group of vulnerable consumers who pay the majority of overdraft loan fees.¹⁵ The Center for Responsible Lending published a survey that found that repeat users of overdraft loan programs are more often low-income, single and non-white and do not own their homes. Just 16% of overdraft loan users account for 71% of overdraft loan fees, while a core group of 6% account for almost half of the fees generated by these programs.¹⁶ This data shows that certain groups are disproportionately affected by overdraft loan programs and an opt-out system does not go far enough to protect them. It also shows that the typical consumer who pays overdraft loan fees is not the hypothetical occasional user.

In general, checking accounts are not designed for, expected to be or suitable as a source of occasional or emergency credit. Automatically enrolling all consumers in the most expensive overdraft service to protect those consumers who rarely use the program will disproportionately affect the segment of the population who actually do find themselves regularly paying overdraft loan fees. This is the group least able to afford it.

II. The following issues are discussed in comments submitted to the Board by Consumers Union to the May 2008 FTC Act Proposal and should be considered in this rulemaking.

Consumers Union's comments to the May 2008 FTC Act Proposal are submitted in Appendix A and contain thorough discussions on various points related to the regulation of fee-based overdraft loan programs. We ask the Board to consider these comments in the current rulemaking. In this section we will provide shorter summaries of these points and highlight consumer's stories that provide real life examples. The longer sections can be found in Appendix A.

A. Fee-based overdraft loans are extensions of credit and should therefore be subject to the Truth in Lending Act requirement to disclose the cost in terms of the annual percentage rate.

We urge the Board to acknowledge that fee-based overdraft loans are extensions of credit and should therefore be subject to TILA and Regulation Z requirements to disclose their cost in terms of annual percentage rate. (See Appendix A, Section II for specific recommendations.)

B. The rule should address unfair transaction clearing practices in deposit accounts.

The FDIC found it to be common practice for banks to process transaction from largest to smallest, which increases the number of overdrafts.¹⁷ Naturally these banks reported higher fee income than those that did not have these features.¹⁸

In January 2009, Stephanie from California shared with us her frustration about her bank's transaction clearing practices. Here is what Stephanie told Consumers Union:

Stephanie is very displeased by the way her bank handles overdrafts. Ten years ago, her bank began processing debits from the largest to the smallest charge by

¹⁵ LISA JAMES & PETER SMITH, CTR. FOR RESPONSIBLE LENDING, OVERDRAFT LOANS: SURVEY FINDS GROWING PROBLEM FOR CONSUMERS 3 (2006), available at http://www.responsiblelending.org/pdfs/ip013-Overdraft_Survey-0406.pdf.

¹⁶ *Id.*

¹⁷ FDIC, *supra* note 6, at III n.9.

¹⁸ *Id.* at IV n.12.

promoting it as a program that would pay mortgage and rent payments first, and then debit smaller amounts thereafter. She explains, "That's bogus because it's possible for all [debits] to be paid anyway, but this way they charge the highest one first and then they get to charge you for all the little \$17 overdrafts that follow." This new ordering policy is not optional – it was automatically applied to her account and could not be changed. As a consequence, Stephanie has incurred many overdrafts over the past years that would not have occurred otherwise.

Also, Stephanie's bank uses a variable fee which increases with each overdraft. The first overdrafts incur a \$24 fee, the third and fourth overdrafts incur a \$30 fee, and any overdrafts thereafter are \$35 each. As the bank debits her account from the largest charge to the smallest, the program causes excessive overdrafts which trigger the \$35 fees quickly. Stephanie supports the idea of an overdraft program, but wants the bank to offer a policy which is more reasonable: "The overdraft policy should be changed to allow the accountholder to decide if and how they want their overdrafts paid. It should be the consumer's option, not the bank's."

Because this practice is so widespread and contributes so significantly to consumers overdrawing their accounts, we ask that the Board consider including a provision restricting this practice in the final rule. (See Appendix A, Section IV for specific recommendations.)

C. The proposed debit hold protections should prohibit financial institutions from assessing a fee for overdrafts caused by a deposit hold.

It is unfair for a financial institution to charge fees for events caused by its own practices. Consumers whose banks choose to impose long check hold times may still get stuck with overdraft fees due to this practice. The Board's legal analysis in the explanatory material of the May 2008 FTC Act Proposal, that overdraft fees triggered by debit holds are an unfair practice, also applies to overdrafts caused by deposit holds.

Mary from Connecticut told the Board in its May 2008 rulemaking about her problems with long deposit hold times as well as with debit holds. More recently, she shared the details with Consumers Union. Here is what Mary told Consumers Union:

Mary has suffered greatly from excessive overdraft fees. As a freelance administrative assistant, she has many responsibilities that don't leave her much time to watch her bank account. On countless occasions, Mary has deposited checks thinking that the amounts would be available immediately – as the bank tellers assured the deposits would "go in right away". Unfortunately, Mary has overdrafted her account on numerous occasions because her bank sometimes put a hold on her deposits, triggering a \$25 fee each time.

In one instance, Mary was charged \$400 in overdraft fees resulting from a delayed deposit. These fees were later reversed after her bank acknowledged that she had not been at fault. Mary has also had trouble with restaurants and gas stations putting holds for "double or triple" the amounts of her purchases, leading to more overdrafts even though she had enough in her account to cover the actual transaction amount.

Mary estimates that she has incurred overdraft fees at least 50 times in situations over the past year where unfair banking policies have led her to overdraft – 80%

of these overdrafts were for purchase amounts much less than \$25. If she could, Mary would prefer to be declined by retailers in the event that her debit transactions would cause an overdraft. After more than \$1250 in overdraft fees, Mary is tired of haggling with her bank.

Consumers Union recommends that financial institutions be prohibited from assessing an overdraft loan fee if the fee would not have been incurred but for the delay in funds availability due to a deposit hold. (See Appendix A, Section VI.B for more information.)

D. The rule should cap the daily and monthly totals for allowable overdraft fees.

We strongly recommend that the Board place a cap on the daily and monthly totals for allowable overdraft fees. It is bad for the account holder's long term fiscal health and bad for the payments system to allow overdraft fees to accumulate unrestrained. Uncapped overdraft loan fees create an incentive for financial institutions to facilitate payments where there are not enough funds. The Board should look into how much these programs cost high volume users (accounts with more than three overdrafts per six month period,) not just at the average cost for all consumers. A recent study showed that 10% of consumers surveyed paid 53% of the overdraft fees charged.¹⁹

Don from Ohio shared with us his story this past January. He describes overdraft fees as, "a snowball effect, I couldn't get away from it –the more you put in the more they take out." Here is what Don told Consumers Union:

Don and his wife rely on a limited income – the paycheck from his part time job, and the social security payment she receives for disability. Don checks his account balances regularly, but has recently been hit with a flurry of overdraft fees because of his bank's overdraft policy.

In October 2008, Don used his debit card and overdrafted his checking account by 85 cents. Before the bank opened the next day, Don deposited \$30 at the ATM thinking that this would cover the 85 cent overdraft – only to discover a day later that he had incurred two overdraft fees, one for the 85 cents and the other because the \$30 he had deposited did not cover the deficit caused by the first fee. The second overdraft triggered another overdraft fee and a \$5 per day fee for each was also added. Altogether Don got hit with \$120 in overdraft fees for an 85 cent overdraft. After haggling with this bank, Don reached a compromise where he only had to pay one of the \$35 overdraft fees.

A few months later, in February 2009, Don decided to make a car payment through his bank's online services, for the first time. When he placed this payment for \$399, the website stated that it would take 5 business days for the transfer to process. To his surprise, in a few days, Don checked his account and found \$468 in overdraft fees. Over two days, Don had used his debit card to make a number of small purchases, mostly under \$10, with the understanding that his car payment would be pending for 5 days. To the contrary – the bank had deducted the \$399 immediately even though the transaction was still processing, and left his account \$64 overdrawn. Each of the small purchases incurred the \$35 overdraft fee and he was also paying a \$5 per day fee for each overdraft. Don was very frustrated. He said, "the amount of \$468 represents our groceries for one month!" Luckily, Don was able to negotiate his \$468 overdraft

¹⁹ PARRISH, *supra* note 12, at 3.

fee down to \$66, which he thought was unfair. In retrospect, Don explains: “[sixty six dollars] was a hell of a lot more than a 42 cent stamp,” which is what it would have cost him to make his car payment by mailing a paper check.

Throughout this time, Don would have preferred that the bank decline all of the transactions which caused overdrafts. Don has resolved never to make an online payment through his bank again and is exasperated with all of the trouble he has gone through because of the bank’s overdraft policy.

III. Consumers should be provided a choice about whether their checks, ACH payments and recurring debits are covered by the most expensive overdraft program offered by the bank.

We ask that the Board expand the rule, under its FTC Act authority, to include transactions other than ATM and one-time debits. At the very least the Board should adopt opt-out for check, ACH and recurring debits, while adopting opt-in for ATM and one-time debit transactions.

A. Not all consumers want their checks paid if it will lead to high overdraft fees.

Even if overdraft loan programs could provide benefit to some consumers who want their check transactions covered, this is not true of all consumers. As we discussed in Section I.C. above, allowing banks to default consumers into the most expensive overdraft program for checks, may benefit a few consumers while harming the group of consumers that pay the majority of fees associated with these programs.²⁰ Giving consumers the true choice provided by opt-in is the only way to ensure that each consumer has account features that they can afford and which help them to maintain economic stability.

Though the majority of participants in the study performed for the Board by Macro International (Macro study),²¹ indicated that they would not opt-out if the decision applied to checks, the study population was only 18 people and therefore it is hard to extrapolate general consumer opinion on this point. Furthermore, people might pick a less expensive bank service to cover their overdrafts if it was made available to them.

B. Automatic overdraft programs diminish the income of vulnerable households because the bank retains a contractual right to set-off the overdraft amount, plus the fee.

The Board makes the point that automatic coverage of returned checks helps consumers avoid adverse consequences beyond the NSF fee, such as merchant fees, negative reporting to credit agencies and violations of bad check laws. We’d like to make the Board aware of the other side of that argument.

As noted by the Consumer Federation of America in comments to the Board’s Regulation DD-Truth in Savings: R-1315 proposal in 2008:

By defaulting consumers into these overdraft loan programs, lenders are allowed to collect payment by preemptive claim on the borrower’s next paycheck, pension, benefit or exempt funds deposit. Banks use their right of set-off to

²⁰ JAMES & SMITH, *supra* note 14, at 3.

²¹ MACRO INT’L, REVIEW AND TESTING OF OVERDRAFT NOTICES III (2008), available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a6.pdf>.

deduct loan principal and finance charges before the accountholder has access to the next paycheck or Social Security direct deposit. Banks deduct the full overdraft amount plus fees before consumers have access to their funds in the account.²²

The detrimental affect that this right to set-off has on the most vulnerable consumers is clear evidence that automatic overdraft coverage of checks and recurring debits is not a benefit to everyone. Therefore, erring on the side of consumer choice will allow consumers to consider their personal situations and decide what bank services provide them real "protection."

This past January, Vickie from West Virginia told Consumers Union about how she has overdraft fees automatically deducted from her next periodic direct deposit. Here is what Vickie told Consumers Union:

Vickie relies on Social Security checks as her only source of income and is having trouble with her bank's overdraft policy. Over the past eight years, Vickie has paid her bank over \$1,000 in overdraft fees alone. On one of these occasions, her account was overdrawn by only 2 pennies, and for this she incurred an overdraft fee of \$34. When she first opened her account in 2001, the fee for overdrafts was \$30 – and over the years it has increased to \$32 and now is \$34.

Vickie has also experienced overdrafts fees triggering other overdrafts because her bank does not notify her when she has a negative balance. Often times, these overdraft fees are deducted from her social security check deposits which she finds particularly upsetting. She describes, "If you miss one little thing in [your account], it can set you way back."

In her frustration Vickie explains, "If [the overdraft] was just two dollars, they didn't care – if two dollars knocked you out of balance then [the effect] is like dominos, they just don't care." For now, Vickie nervously watches her account balances in fear of overdrafting again.

IV. Operational Considerations

We offer comment on various operational considerations that would improve the Board's proposal. Even if the operational improvements are made, we reiterate that opt-out is insufficient because it will not provide effective protection from high cost unrequested credit.

A. It is essential that the proposal go into effect as soon as possible.

Automatic fee-based overdraft loan programs take significant funds from families who have never consented to those fees. In the current economy, these funds are needed at the grocer, the gas pump, and many other places. This is even more important now that the proposal has already been delayed from its original iteration in the May 2008 FTC Act Proposal. We hope that the Board takes this into consideration and sets an effective date as early as possible. We suggest implementation not later than 90 days from the date of the final rule.

²² Letter from Jean Ann Fox, Consumer Federation of America, to Jennifer A. Johnson, Secretary, Board of Governors of The Federal Reserve System, July 18, 2008, available at http://www.consumerfed.org/pdfs/FRB_%20TISA_CFA_Comments_7_19_08.pdf.

B. Notice should be provided separately for opt-out as well as opt-in.

We commend the Board for including a requirement that notice explaining the institution's overdraft service be segregated from all other bank communications if the opt-in approach is adopted. This requirement is even more essential if the inferior opt-out approach is chosen, because the opt-out approach defaults consumers into the most expensive program for covering their overdrafts. This is true both for the initial notice provided in section 205.17(b)(1)(i), and for subsequent notices required by 205.17(c)(2).

Two studies confirm that consumers prefer overdraft communications to be separate from the periodic statement. In the Macro study about three quarters of the participants preferred that the bank send a separate notice informing them of their opt-out right each time they overdraw their account, rather than have the information included as part of a periodic statement.²³ The *Consumer Reports* National Research Center poll, with a much larger sample size of 679 individuals, had the same result. Overall, 74% of people polled said they want to be notified about signing up for or canceling a fee-based overdraft loan service in a separate letter, rather than on the bank statement.²⁴

C. Specific language should be included to ensure that consumers have a reasonable opportunity to opt out.

Section 205.17(b)(1)(ii) ensures that banks provide consumers with a reasonable opportunity to either opt in or out (depending upon the approach adopted by the Board) of the bank's automatic overdraft loan program for ATM and debit transactions. If the inferior opt-out approach is adopted, we encourage the Board to make 205.17(b)(1)(ii) more specific by including requirements in the regulatory language. Regulation of a practice that the Board has characterized as unfair under the FTC Act should not be left up to a "reasonableness standard."

Because the opt-out approach defaults consumers into the most expensive program for covering their overdrafts, it is essential that consumers receive adequate time to reply to their institution. A 30 day fee-free time period is essential and should be included in the regulatory language.

In addition, banks should be required to provide consumers with all methods available for communicating a decision to opt out to the bank, including mail, phone and internet. This is supported by the Macro study, in which only 2 of the 18 participants preferred to opt out via mail, while the remaining participants preferred to communicate via phone or the internet.²⁵ If banks provide only a mail-in opt-out communication, consumers could be discouraged from using their right to opt out.

We also support including as a requirement that banks provide the opt-out notice at or before account opening and require the consumer to make the decision in order to proceed with opening the account. This is the best way to ensure that the consumers take note of their right to opt out. Without this, there is no way of knowing whether the consumer received the information.

²³ MACRO INT'L, *supra* note 22, at iv.

²⁴ FINANCIAL REGULATION POLL, *supra* note 1, at 10.

²⁵ MACRO INT'L, *supra* note 22, at iii.

V. Payment of checks should not be conditioned upon consumer's decision regarding overdraft coverage of ATM and debit transactions.

We appreciate and support the Board's attempt to prevent banks from circumventing consumer choice by discouraging consumers from invoking their rights under this rule. As such, the Board should prohibit institutions from conditioning payment of overdrafts for checks, ACH and recurring transactions, on the consumer's decision regarding coverage of overdrafts for ATM and debit transactions.

The Board explained that it made the decision to place this overdraft proposal in Regulation E, because the Board believed that some consumers may benefit from having certain transactions covered by an overdraft service, mainly checks and ACH payments.²⁶ Allowing banks to condition their coverage of checks on the consumer's decision with respect to ATM and debit transactions could prevent consumers from benefiting from the targeted nature of this rule.

One solution is for the Board to adopt opt-out for check, ACH and recurring debit transactions, while adopting an opt-in for ATM and one-time debits. At the very least, we urge the Board to adopt the restrictive language "shall not" in Section 17(b)(2) of both the opt-in and opt-out approaches.

VI. The Board should adopt Alternative A of Section 205.17(b)(3) because the terms and conditions of a consumer's bank account should be identical regardless of the decision regarding overdraft coverage of ATM and debit transactions.

We encourage the Board to adopt a final rule that avoids any perception that consumers' decisions regarding overdraft coverage of ATM and debit transactions may negatively affect them. We understand that Alternative B, Section 205.17(b)(3), specifies that the variation in terms may not be so substantial as to discourage a reasonable consumer from opting in or out, but we feel that this alternative allows for a unnecessary level of choice by the bank.

The Board uses the example that a financial institution may wish to price some account services differently for an "opt-out" account. But unfortunately this goes against consumer preference and may significantly sway consumers' decision to opt in or out. The *Consumer Reports* National Research Center poll clearly shows that most consumers want their checking accounts to cost the same regardless of whether or not they decline overdraft coverage. Three-quarters said that they want the same type of bank account whether or not they agreed to pay for an overdraft service.²⁷

VII. If the opt-in approach is adopted, existing customers should not be assessed fees without getting the same notice and opportunity to sign up, as new customers. Likewise a hybrid approach requiring existing customers to opt out is not sufficient.

If the opt-in approach is adopted, the notice requirement in §205.17(c)(1) for existing accountholders must be strengthened to ensure that all consumers get the same protections. We appreciate that the Board included a notice requirement for both new and existing customers under the opt-out alternative, as it was an important issue that we raised in our

²⁶ 74 Fed. Reg. 5212, 5231.

²⁷ FINANCIAL REGULATION POLL, *supra* note 1, at 11.

comments to the May 2008 FTC Act Proposal.²⁸ These same protections must be included for all customers if the opt-in approach is adopted.

The current proposal allows banks to use discretion and notify existing customers about their right to opt in either on the first periodic statement after the rule's effective date, or following assessment of an overdraft fee. A basic purpose of the opt-in approach is to give consumers a choice to decide whether to participate in an expensive program before being assessed fees. Starting the opt-in requirement only after a fee is assessed permits an unnecessary cost to consumers. Requiring pre-fee opt-in notice only to new accounts severely limits the consumers who receive it.

As an example, JP Morgan Chase ended 2008 with a total of 24.5 million checking accounts. Only one million of those accounts were newly opened.²⁹ Under the proposed rule, Chase would be prohibited from assessing fees for covering ATM and debit overdrafts without getting affirmative consent from these one million new customers. The 23.5 million existing customers on the other hand, may not receive any notification until they incur at least one additional fee. The *Consumer Reports* National Research Center poll found that 14% of consumers surveyed had received an ATM or debit card overdraft fee in the past six months.³⁰ That amounts to 3,290,000 existing Chase customers who will receive an overdraft fee before being notified of their opt-in right. Chase bank charges \$25 the first time a customer overdrafts using their ATM or debit card.³¹ Therefore under the proposed rule, even if the opt-in approach is adopted, Chase bank will be able to charge \$82,250,000 in overdraft fees before sending notification to all consumers.

We do understand that there are operational costs for banks to notify every single customer about a service which many don't use, but this cost should be weighed against the cost of the average \$34 fee,³² for each individual consumer. Therefore we offer a simple solution to ensure that the rule is equally fair to existing customers. We asked that the Board prohibit banks from assessing any overdraft fees starting 60 days after the effective date, to consumers who have not opted into the program. This will encourage banks to advertise this service by providing notification to as many consumers as possible. On the effective date, the 60 day clock provided in Section 205.17(g) will start running. If the customer does not opt in after 60 days, then their overdraft coverage is cancelled and the bank may not assess any additional fees for covering ATM and debit overdrafts.

The Board should not adopt a hybrid approach under the opt-in model, which would require existing customers to opt out of overdraft coverage. By adopting the opt-in approach, the Board is giving consumers a choice to decide whether to participate in an expensive program, before being assessed fees. Allowing existing customers to incur fees before being notified of their rights, denies them the choice to enroll. This would be very detrimental to the many existing customers who have been negatively affected by these programs. They should not have to incur more fees and take affirmative steps to cancel a program that new customers are not being forced into.

²⁸ LETTER FROM LAUREN ZEICHNER, CONSUMERS UNION, TO JENNIFER A. JOHNSON, SECRETARY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, June 27, 2008, at Section VIII., available at <http://www.consumersunion.org/pdf/Overdraft-Comm2-0608.pdf>.

²⁹ Telephone Interview with Tom Kelly, Media Relations, J.P. Morgan Chase (Feb. 6, 2009).

³⁰ POLL, *supra* note 1, at 13.

³¹ Telephone inquiry to unnamed Chase Bank telephone banker (Mar. 6, 2009). This fee increases to \$32 and subsequently \$35 depending on the number of overdrafts per month.

³² ERIC HALPERIN & PETER SMITH, CTR. FOR RESPONSIBLE LENDING, OUT OF BALANCE 11 (2007), available at <http://www.responsiblelending.org/pdfs/out-of-balance-report-7-10-final.pdf>.

VIII. The Board should be aware of a potential loophole in the Section 205.19 regarding debit holds.

Section 205.19 prohibits financial institutions from assessing an overdraft fee when the overdraft would not have occurred but for a debit hold placed on funds in the account that exceeds the actual purchase amount. Many consumers do not know that holds are often placed by retailers when they use their debit card to make a purchase. In a 2008 Consumers Union online questionnaire,³³ consumers were asked how they found out that money had been frozen after they filled up at the gas station. Over 10% of respondents said that the only reason they realized a debit hold had been placed was because they received an overdraft fee. This provision will ensure that consumers are not penalized for a problem caused by the bank's decision to place a debit hold on the consumer's checking account. We raised one concern with this provision in Section II.C. above, regarding overdrafts caused by deposit holds. In addition, we'd like to bring to the Board's attention a potential loophole in the language of Section 205.19 that our consumer story collection has highlighted.

The language of this provision allows institutions to assess overdraft fees when the overdraft occurs in connection with a debit hold that is *equal to or less than* the transaction amount. There are situations where consumers have sufficient funds in their account to cover the transaction, the debit hold was equal or less than the transaction amount, and they still overdraw the account because the transaction posts while the hold is still in place, without displacing it.

Nancy from Florida told us in February of this year that she has had problems with debit holds that were less than the transaction amount, which were reflected on her account at the same time as the entire transaction. This led her to overdraw her account. Here is what Nancy told Consumers Union:

In her banking experience, Nancy has had problems with restaurants placing holds on her debit card. She explains, "I had a \$20 meal - [the restaurant] swiped my card and I received a \$20 hold. After I added \$5 for the tip, they swiped another \$25. [The bank] was now applying two holds for a total of \$45 against my account. It took 3 days for the first hold of \$20 to drop off." These holds cause overdraft fees that cause even more overdraft fees because her account remains in the negative – even though she actually did have enough money in the account to pay for the meal initially.

This story illustrates the fact that the debit hold and the transaction amount can be reflected in the account at the same time. The exception provided in Section 205.19, will lead consumers to continue to be penalized for a problem caused by the banks' decision to place a debit hold on the consumer's checking account.

IX. Conclusion

We applaud the Board for recognizing, through this proposed rule that overdraft loan programs are inherently unfair if consumers are not clearly notified that they are enrolled in the service. The opt-out solution is a partial step forward, but it does not go far enough to protect the consumers who are affected by these unfair practices. We respectfully ask the Board to adopt

³³ Information on file with Consumers Union. Unlike the *Consumer Reports* National Research Center poll, the online questionnaire did not use a sampling technique.

the second alternative and to provide consumers the right to affirmatively opt into these expensive overdraft loan programs before any fee can be charged.

We look forward to the continuing work of the Board on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to be the initials 'LB' with a stylized flourish.

Lauren Z. Bowne
Staff Attorney
Financial Services Campaign
Consumers Union

Appendix A

Consumers Union

June 27, 2008

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington DC 20551

Re: Regulation AA- Unfair or Deceptive Acts or Practices and Regulation DD- Truth in Savings

Office of Thrift Supervision: Docket ID OTS-2008-0004
National Credit Union Administration: RIN 3133-AD47
Federal Reserve Board: Regulation AA: R-1314 & Regulation DD: R-1315

Dear Chairman Bernanke, Members of the Board, and Board Secretary Johnson:

Consumers Union of U.S., Inc, the nonprofit publisher of *Consumer Reports*, writes to comment on proposed Regulation AA - Unfair or Deceptive Acts or Practices [R-1314], the recent proposal to curb unfair and deceptive credit card and overdraft practices and companion proposal Regulation DD [R-1315] regarding the form and content of disclosures under the Truth in Savings Act. We appreciate the fact that the Federal Reserve Board (Board), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) (collectively "Agencies") recognize that the current practices in the application of overdraft loan programs, which the proposals refer to as "overdraft services," are unfair. However, there are changes that should be made to the proposed rules to ensure that they adequately address the abuses and unfair practices in overdraft loans.

Our comment will address the positive changes proposed in Regulation AA [R-1314], and Regulation DD [R-1315], and will highlight those issues we believe could better protect consumers from unfair practices. This comment addresses overdraft loan and deposit services issues. A separate comment letter addresses the credit card issues in docket R-1314.

Our comments will discuss the following issues:

- The rule should provide consumers the right to affirmatively opt in to overdraft loan programs rather than opt out.
- Financial institutions should decline debit transactions if there are insufficient funds, rather than applying an overdraft loan program.
- If the Agencies retain the opt-out approach, it should be limited to check and ACH payments with affirmative opt-in required for debit card transactions. Also, financial institutions should not be permitted to assess any overdraft fee until after the first overdraft instance when explicit opt-out notice is given.

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- Fee-based overdraft loans are extensions of credit and should therefore be subject to the Truth in Lending Act requirement to disclose the cost in terms of the annual percentage rate.
- Financial institutions should provide consumers with fee-triggered opt-out notification, or at the very least, notify consumers of the opt-out right once within the month during which an overdraft fee has been assessed, even if the account has quarterly statements.
- The rule should address unfair transaction clearing practices in deposit accounts.
- The rule should prohibit financial institutions from assessing bounced check (NSF) fees when a check bounces solely due to a debit hold.
- The rule should ban overdraft fees and NSF fees when the overdraft would not have occurred but for a funds availability hold on deposited funds.
- The format and content requirements detailed in Section 230.10(b) need to be slightly modified.
- Financial institutions should not display as available those balances that reflect funds not yet available for use due to a check hold.

I. Section 227.32: Automatic enrollment in overdraft services is an unfair practice, even when the consumer is provided the opportunity to opt out.

Section 227.32(a)(1) requires financial institutions to give consumers notice and an opportunity to opt out before making an overdraft loan. We applaud the Agencies' efforts to address the systemic unfair practice of enrolling consumers by default in overdraft loan programs. These programs cost consumers \$17.5 billion in fees annually, for \$15.8 billion in loans.¹ The fee-based overdraft system is biased against lower balance households and can significantly inflate the true monthly cost of holding an account. This is especially unfair considering these services are often attached to accounts that are advertised as free but which in reality make the accounts uneconomical.² This gives bank accounts a bad name with some segments of the public and creates a barrier to consumers entering into the banking market. For these reasons we respectfully suggest that the rule be further tightened.

The proposed rule allows financial institutions to continue enrolling consumers in expensive overdraft loan programs without their affirmative consent. We urge the Agencies to change the proposed rule and require financial institutions to obtain the affirmative consent of consumers in writing to receive overdraft services before the first time that any overdraft fee is charged to the consumer's account.

A. The purported benefits of overdraft loan programs are grossly overstated.

Overdraft loan programs do not benefit consumers to the extent that financial institutions claim. The Agencies' analysis discusses the rare occasion when a consumer, who was never asked if

¹ Eric Halperin & Peter Smith, *Out of Balance*, Center for Responsible Lending, July 11, 2007, at 11, at <http://www.responsiblelending.org/pdfs/out-of-balance-report-7-10-final.pdf>.

² Rhea L. Sema, "Free Checking" is not Free. *A Closer Look at Overdraft Fees: How California's Largest Banks Profit from Low-Balance Account Holders*, California Reinvestment Coalition, November 19, 2007, at <http://www.calreinvest.org/banking-insurance/overdraft-fees>.

he or she wanted high-fee overdraft credit, might benefit from the coverage of an important check, such as a mortgage, auto, or insurance payment. But these programs provide no assurance that such important payments will be covered, because for any individual check, the overdraft program is discretionary on the part of the bank.

Financial institutions assert that these high cost programs are valuable because they *may* cover special purpose mortgage or insurance checks, which are generally larger checks. This is inconsistent with the fact that the average transaction paid through an overdraft loan is significantly smaller than an average mortgage, auto, or insurance payment. Studies show that fee-based overdraft loans are very small, averaging \$27, whereas the fees charged by the bank average \$34.³ These overdraft programs are not being used to cover large important payments, instead the loan amount is often even smaller than the fee assessed. Any assumption that overdraft programs benefit consumers by covering important checks is further invalidated because 46 percent of all overdrafts are triggered by debit card point of sale transactions, while only 27 percent are triggered by paper checks.⁴ Therefore, the claim that there is a benefit for overdraft services stemming from special nature payments, such as mortgage payments, is weak at best and in any case not applicable to debit payments.

We suggest the following modification to §227.32: Because almost half of all overdraft loans are triggered by debit card purchases and most of these are significantly less than the overdraft fees assessed, it should be an unfair practice to charge an overdraft loan fee for a debit transaction. The institution can simply decline debit transactions if there are insufficient funds. A recent survey shows that consumers overwhelmingly want debit transactions to be declined if the account will become overdrawn, rather than be subject to overdraft fees.⁵

B. The Agencies should replace the opt-out requirement in §227.32(a)(1) with an affirmative opt-in requirement.

We question the assertions made by financial institutions about the value to consumers of overdraft programs. If overdraft programs in fact have substantial benefit to consumers, then financial institutions should be able to persuade customers to sign up for them. We therefore recommend requiring an opt-in system that puts the market incentives in the right place. The entity that wants to sell the product and collect the fees must educate its customers sufficiently about the product to get customers to affirmatively sign up. Opt-out lacks the same market incentives as opt-in. Because the financial institution does not have to go through the process of selling its overdraft program to customers under an opt-out system, it has less incentive to create a product that is a good value for the consumer.

The proposed rule is insufficient because it leaves enrollment in overdraft programs (and the potential to incur high fees) as the status quo. There is a tremendous difference between an affirmative opt-in versus a negative option opt-out. Behavioral economists have shown that consumers are much more likely to contribute to retirement plans if the plans automatically enroll them but permit an opt-out, than if consumers are required to affirmatively opt-in.⁶

³ Halperin & Smith, *supra* note 1, at 4.

⁴ Eric Halperin & Lisa James & Peter Smith, *Debit Card Danger*, Center for Responsible Lending, January 25, 2007, at 3, at <http://www.responsiblelending.org/pdfs/Debit-Card-Danger-report.pdf>.

⁵ Leslie Parrish *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending, April, 16, 2008, at 4, at <http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf>.

⁶ Richard H. Thaler and Shlomo Benartzi, *Save More Tomorrow: Using Behavioral Economics to Increase Employee Saving*, August 2001, available at <http://faculty.chicagogsb.edu/richard.thaler/research/SMarT14.pdf>.

Similarly, the percentage of consumers who will end up sticking with an expensive overdraft loan program will be much higher with the opt-out because the consumer is automatically "enrolled". Setting the default option is crucial, because inertia is a powerful force.

An opt-out system creates the added challenge of ensuring that consumers have adequate information and notice to make an educated decision. If not, the opt-out is meaningless. In order for a consumer to assess whether an overdraft program is in his or her financial interest, the notice must be clear and adequately explain the program. The consumer must be able to read and understand the materials, have sufficient financial literacy, and have time to make the evaluation. A small group of vulnerable consumers pay the majority of fees associated with discretionary overdraft loan programs.⁷ Repeat users of overdraft loan programs are more often low-income, single and non-white and do not own their homes. Just 16 percent of overdraft loan users account for 71 percent of overdraft loan fees, while a core group of 6 percent account for almost half of the fees generated by these programs.⁸ This data shows that certain groups are disproportionately affected by overdraft loan programs and an opt-out system does not go far enough to protect them.

C. If the Agencies retain opt-out, there are modifications that can make it fairer.

We suggest the following modification to §227.32(a)(2): Section 227.32(a)(2) requires banks to provide consumers with the option to opt out only for the payment of overdrafts triggered by ATM or debit transactions. By including this provision in the proposed rule, the Agencies recognize that these overdraft loans are more costly to the consumer relative to the loan amount than overdraft loans triggered by check and ACH payments. As discussed above, because an opt-out system will not protect consumers as well as opt-in, this provision does not go far enough to prevent the disproportionate impact these overdraft programs have on debit card users.⁹

If the Agencies retain the opt-out approach, it should be limited to check and ACH payments, with affirmative opt-in required for overdraft loans triggered by debit card transactions. This modification will protect consumers in a real way and should be no less of a technical challenge than what is currently being proposed in §227.32(a)(2). In both cases, payments would need to be tagged to determine which program they fall under.

We do not support a regulatory limitation that would grant consumers the right to opt out only from ATM and debit card transactions. At the very least, consumers should have the rights currently delineated in proposed §227.32(a)(2) to choose between a partial opt-out and an opt-out for all transactions.

We suggest the following additional modification to §227.32: The Agencies should prohibit an overdraft fee from being assessed until after the first overdraft instance when explicit opt-out notice is given. This change would ensure that financial institutions that use the opt-out are restricted from applying an overdraft charge before the consumer has been told what is at stake in the context of an actual overdraft. This could be used in conjunction with the above suggestion to apply opt-in to debit card transactions even if the Agencies retain opt-out for other payments.

⁷ Lisa James & Peter Smith, *Overdraft Loans: Survey Finds Growing Problem for Consumers*, Center for Responsible Lending, April 24, 2006, at 3, at http://www.responsiblelending.org/pdfs/ip013-Overdraft_Survey-0406.pdf.

⁸ *Id.*

⁹ Halperin & James & Smith, *supra* note 4, at 3

With this suggested modification, the rule would work as follows. A consumer overdraws the account for the first time. The bank then sends an initial notice explaining to the customer that he or she overdrew the account by \$X and the bank covered it for free this first time through the overdraft loan program. The notice would then explain that unless the customer opts out of the program, the next overdraft will trigger a fee of \$XX. All other disclosures required by proposed §230.10 would also be contained in this notice. Financial institutions that wish to charge customers for the very first overdraft loan could obtain the customers written affirmative consent to opt in to the loan program prior to making the first overdraft charge.

II. Overdraft loans are extensions of credit and should not be treated as if exempt from TILA.

There is an outdated distinction being made between overdraft programs that are subject to the Truth in Lending Act (TILA) and Regulation Z, such as checking accounts that link to a savings account, line of credit or a credit card, and those discretionary fee-based programs being addressed in this proposal, which the Agencies have treated as if they are exempt from the TILA/Regulation Z requirements. Though the distinction might have had some merit in a time when financial institutions covered the occasional overdraft on a case-by-case basis as a courtesy to account holders, this is no longer the case.

The Agencies noted in the 2005 Interagency Guidance on this subject,¹⁰ that some financial institutions promote overdraft services in a way that leads consumers to believe that it is a line of credit. In addition to the one-time overdraft fee that is assessed when a transaction overdraws an account, financial institutions often charge an additional fee each day that the account remains overdrawn. Essentially the banks are charging the customer ongoing fees to borrow money, which is more like a credit transaction than a fee for service.

In the Board's Regulation DD proposal, financial institutions will be required to disclose alternatives for the payment of overdrafts, including any lines of credit that are regulated by Regulation Z. Because those lines of credit are subject to TILA disclosures it is deceptive to have no TILA disclosures for the overdraft loan programs because it makes the line of credit look more expensive and may deceive consumers into not choosing it for that reason.

The Agencies acknowledged in 2005 that the application of TILA and Regulation Z regulatory exceptions to these fee-based programs may need to be reevaluated sometime in the future.¹¹ The time is here. We urge the Agencies to acknowledge that fee-based overdraft loans are extensions of credit and should therefore be subject to TILA and Regulation Z requirements to disclose their cost in terms of annual percentage rate.

III. The rule should provide increased periodic opt-out opportunities triggered by overdraft fee assessment.

A. The periodic opt-out notice is essential, and once per statement period may be too seldom to receive the opt-out notice for some consumers.

We suggest the following modification to §227.32 (a)(1): Section 227.32(a)(1) requires financial institutions to offer consumers the opportunity to opt out of the overdraft loan program once during any statement period in which an overdraft fee is charged. This requirement is essential and should be retained, as well as strengthened. Once per statement period or even once per month (see our suggestion in Section III.B) may not sufficiently notify some consumers of their

¹⁰ *Joint Guidance on Overdraft Protection Programs*, 70 FR 9127, at 9129 (February 24, 2005).

¹¹ *Id.* at 9128.

opt-out right. A consumer is likely to be most aware of the household cost and any personal trade-offs involved in the receipt of this expensive form of credit immediately after the fee has been charged.

We recommend that the rule require opt-out notification once per incident or series of consecutive incidents that trigger one or more fees. If a consumer receives the opt-out notice each time this high fee is triggered he or she could become educated about the risks and expense of overdrafts, which could lead to beneficial behavioral changes. If overdraft programs are a genuine service (as financial institutions contend,) rather than a form of credit which encourages the overdrafting of accounts, then financial institutions as well as customers will be served by the educational function of the fee-triggered opt-out notice.

B. Persons receiving quarterly statements should still receive the opt-out notice in any month in which they incur an overdraft fee.

If our suggestion in Section III.A is not adopted, we suggest the following modification to Section §227.32(a)(1): If the Agencies do not require an fee-triggered opt-out notice for each incident, then they should at least require that the opt-out notice be sent each month, as opposed to each statement period following an overdraft. This would protect student accounts and other special, often low-balance accounts that receive quarterly, rather than monthly statements. Since low-balance consumers may be at higher risk of encountering overdraft fees, they may be the most in need of prompt notification of overdraft charges. If the rule stays in its current form, these consumers will have to wait up to three months for a quarterly statement informing them that a fee was assessed and giving them the option to opt out. At the very least, the rule should be amended to require the notice and opportunity to be provided at least once per periodic statement period or once per month, whichever is more frequent.

IV. Unfair transaction clearing practices should be addressed in the rule.

The proposed rule should prohibit financial institutions from assessing overdraft or NSF fees in amounts greater than would occur under low-to-high clearing of batch processed transactions. As noted in Congressional testimony from the Consumer Federation of America:

Banks decide the order in which withdrawals will be processed from accounts which has a large impact on the frequency of overdrafts and the cost to consumers with low balances. A bank that pays the largest check first can cause more checks to bounce for low-balance customers and can charge a penalty fee for each one. Consumers do not know the order in which items drawn on their account will be presented to their bank and are not likely to know the order in which their bank pays items. As a result, the Federal Reserve noted in adopting Truth in Savings regulations¹² that consumers who are aware that their account may be overdrawn are not likely to know the number of items that will bounce or the total fees they will be charged.¹³

....

... The justification banks give for clearing checks high to low is to make sure important big ticket items are paid, but that rationale can not justify this practice for banks that routinely cover overdrafts because all debits will get covered. If

¹² Truth in Savings, 12 CFR Part 230, at

<http://www.federalreserve.gov/BoardDocs/Press/bcreg/2005/20050519/attachment.pdf>.

¹³ Jean Ann Fox, Testimony before the Subcommittee on Financial Institutions and Consumer Credit, U. S. House Committee on Financial Services, (July 11, 2007), available at http://www.consumerfed.org/pdfs/OD_Maloney_Overdraft_Loan_Testimony071107.pdf.

banks choose to pay transactions that overdraw accounts for the vast majority of customers, this is a moot argument. The only purpose for clearing the largest transactions first is to maximize the imposition of multiple overdraft fees for low balance customers.¹⁴

We urge the Agencies to address this issue in one of two ways. One approach is to prohibit financial institutions from engaging in the unfair practice of delaying the posting of any deposit or manipulating the order in which withdrawals are posted if such practice results in one or more overdrafts or NSF's that trigger a fee which would not have occurred with a different order of posting. This is in line with the recommended guidance put forth by the OTS, that transaction clearing rules should not be administered unfairly or manipulated to inflate fees.¹⁵

Alternatively, we recommend that the Agencies require financial institutions to pay lower dollar items before higher ones when batch processing, or to impose no fees greater in number than would have been imposed if they had done so. We have no objection to the concept of a fully informed opt-in, if in a rare case the consumer affirmatively requests an alternate clearing order.

V. The rule should cap the daily and monthly totals for allowable overdraft fees.

We strongly recommend that the Agencies place a cap on the daily and monthly totals for allowable overdraft fees. It is bad for the account holder's long term fiscal health and bad for the payments system to allow overdraft fees to accumulate unrestrained. It creates an incentive for financial institutions to facilitate payments where there are not enough funds. One study has shown that when banks implement bounce protection policies, they experience a 50 percent increase in overdraft checks.¹⁶ The Agencies should look into how much these programs cost high volume users (accounts with more than three overdrafts per six month period,) not just at the average cost for all consumers. A recent study showed that 10 percent of consumers surveyed paid 53 percent of the overdraft fees charged.¹⁷ If the Agencies do not act now to cap the total fee accrual, the docket should be kept open so that the record in this proceeding can be used to support placing a cap in the future.

VI. Section 227.32(b): The Agencies should include NSF fees in the proposed rule's debit hold provision and should prohibit financial institutions from assessing any fee if the overdraft is caused by a deposit hold.

Section 227.32(b) prohibits financial institutions from assessing an overdraft fee when the overdraft would not have occurred but for a debit hold placed on funds in the account that exceeds the actual purchase amount. This provision is a positive step towards curbing an unfair practice, but does not go far enough. Many consumers do not know that holds are often placed by retailers when they use their debit card to make a purchase. In a recent Consumers Union online questionnaire,¹⁸ consumers were asked how they found out that money had been frozen after they filled up at the gas station. Over 10 percent of respondents said that the only reason they realized a debit hold had been placed was because they received an overdraft fee.

¹⁴ *Id.*

¹⁵ *Guidance on Overdraft Protection Programs*, 70 FR 8428, at 8431 (February 14, 2005).

¹⁶ Jean Ann Fox, *Overdrawn: Consumers Face Hidden Overdraft Charges From Nation's Largest Banks*, Consumers Federation of America, June 9, 2005, at 13, at <http://www.consumerfed.org/pdfs/CFAOverdraftStudyJune2005.pdf>.

¹⁷ Parrish, *supra* note 5, at 3.

¹⁸ Information on file with Consumers Union.

Section 227.32(b) will ensure that consumers are not penalized for a problem caused by the bank's decision to place a debit hold on the consumer's checking account.

This provision does not go far enough because: 1) it allows financial institutions to continue charging bounced check fees (NSF) when a check bounces due to a debit hold; and 2) the rule ignores the issue of overdraft fees and NSF fees caused by a deposit hold rather than by a debit hold.

A. It is also an unfair practice for a financial institution to charge an NSF fee when a check bounces due to a debit hold.

Under the proposed rule financial institutions will be able to continue charging consumers NSF fees when a debit hold triggers a bounced check. This practice is unfair for all the same reasons that make the overdraft fee unfair when caused solely by the debit hold. Banks will have no incentive to improve the debit hold system if they simply swap the overdraft and loan fee for an NSF fee. The justification that financial institutions often give for charging NSF fees is to change consumer behavior, or deter consumers from writing bad checks. This asserted justification is particularly lacking if the bank's and merchant's debit hold processing methods, not true lack of funds, cause the check to bounce. The Agencies' legal analysis regarding the unfairness of overdraft fees due solely to debit holds should be equally applied to NSF fees caused by debit holds.

B. It is unfair to assess overdraft or NSF fees caused by a deposit hold.

Consumers whose banks choose to impose long check hold times may still get stuck with overdraft fees or NSF check fees due to this practice. The principle behind the debit hold rule is that it is unfair for a financial institution to charge fees for events caused by its own practices. The Agencies' legal analysis, that overdraft fees triggered by debit holds are an unfair practice, also applies to overdrafts and NSFs caused by deposit holds.

Consumers are harmed when they incur NSF or overdraft fees solely due to a financial institution's check hold policies. It is difficult for consumers to know how long to wait before they have full access to their funds. Hold notices can be sent by snail mail, with checks clearing against the held deposit even before notice is mailed. These practices make it very difficult for consumers to know when a transaction will exceed the available funds and therefore should not be assessed a fee if they do happen to overdraft. We recommend that financial institutions be prohibited from assessing an NSF or overdraft loan fee if the fee would not have been incurred but for the delay in funds availability due to a check hold. It seems particularly wrong to allow an overdraft loan fee in the time between the actual clearing of the deposited check that covers that transaction and the end of a longer funds availability hold on that same deposit.

Example: A financial institution quickly withdraws funds from Consumer A's account when Consumer A writes a check to Consumer B. But the bank does not apply the same speed when crediting Consumer B's account with the deposited funds. We suggest that no fee be assessed to Consumer B for a transaction that would have cleared had the deposit not been delayed by the bank's funds availability policy. An exception to the rule would apply if Consumer B's transaction would have triggered an overdraft despite the hold. In this case, the overdraft was not caused by the bank's practice and the fee can be fairly assessed.

VII. Section 230.10(b): Consumer testing, opt-out disclosures and delivery of opt-out notices.

The Regulation DD analysis states the Board's intention to engage in consumer testing about the form and manner of the opt-out. We agree that this will be essential, but it should be done promptly so that it does not delay implementation of the Regulation AA requirements. In order for a consumer to assess whether an overdraft program is in his or her financial interest, the notice must be clear and adequately explain the program. However, a well-written notice is not enough for many consumers. The consumer must be able to read and understand the notice, have sufficient financial literacy and have time to make an evaluation. People who are unable to do this assessment will be disproportionately affected and the opt-out will be meaningless for them. We therefore urge the Board to perform testing that will determine the basic level of understanding communicated by any overdraft opt-out notice, however well crafted. If the testing shows—as we believe it will—that opt-out is hard to communicate, difficult to understand, or unlikely to be used, this is another strong reason for the Agencies to change to an opt-in rule.

In §230.10(b) the Board delineates the format and content requirements of the opt-out notice. With respect to the model form, we urge the Board to consider not only the words of the form, but also the timing and manner of presentation for maximum effectiveness. We respectfully submit our comments on each sub section of this provision of the proposed rule:

- Overdraft Policy, §230.10(b)(1): We support the requirement that the opt-out notice state the categories of transactions that can trigger overdraft fees. This lets the consumer know that because the account is covered by the bank's overdraft loan program there will be no notice at the time of payment if the consumer's account does not have funds to cover the transaction.
- Fees Imposed, §230.10(b)(2): Though we support the requirement that the opt-out notice state the fees that will be charged when an overdraft is covered, as we discussed in Section II above, we urge the Board to reevaluate the validity of treating fee-based overdraft loan programs as exempt from TILA.¹⁹ Consumers should be notified of the fees and costs associated with every overdraft product offered by the bank in terms of the annual percentage rate. This will help to ensure that consumers receive adequate information to support more informed decisions.
- Fee in Relation to Overdraft, §230.10(b)(3): We support the requirement that the opt-out notice give the lowest dollar amount that can trigger an overdraft fee. This could serve to educate consumers and may influence the market in a helpful way by encouraging financial institutions to compete in structuring their overdraft programs. The market might reward financial institutions who select a *de minimus* amount below which the fee won't be charged. For example, a financial institution could choose to set the threshold for charging an overdraft fee at \$10, or \$25, or a loan amount equal to the overdraft fee.
- Maximum Cost, §230.10(b)(4): Though we support requiring banks to disclose the maximum amount of overdraft fees they will charge per day and per statement period, as we discussed in Section V, we strongly recommend that the Agencies place a cap on the daily and monthly totals for allowable overdraft fees under Regulation AA.

¹⁹ 12 CFR § 226.4(c)(3) (1996).

- Disclosure of Opt-Out, §230(b)(5): We support requiring a notice explaining the right to opt out along with how a consumer may exercise that right. We recommend the notification be in an easy to understand form that allows the consumer to check a box or sign the form to turn it in. The form should be printed with the address to which it can be sent.
 - For web-based account opening or web-based statements, the testing should evaluate the ways in which the form can be presented for effectiveness. The regulation should prohibit a web presentation that minimizes the likelihood that the form will be seen, read, or considered. In addition, all opt-out forms, particularly web forms should ask for only necessary information in order to alleviate any consumer fears about identity theft that may deter use of the form. Further, the rule should prohibit a financial institution from requiring a consumer to consent to solely electronic disclosures as the condition for using an electronic opt-out form.
 - All of the following opt-out methods should be available to consumers each time they are given the opportunity to opt out: paper form with a check-off box and printed address for return; toll free phone number without long or complex menu barriers; and a web request page.
 - All opt-out notices that are triggered by an overdraft fee assessment should be sent to consumers independently from other bank communications (except the §230.11 disclosures) to best ensure that the notice comes to the consumer's attention.
 - The content of the opt-out notice that is triggered by assessment of an overdraft fee should state the amount of the transaction that caused the consumer to overdraw the account as well as the amount of the fee. Seeing these two numbers together should help educate the consumer about the actual cost of overdrawing the account and hopefully shape behavior. The amount of the fee should always be included in the opt-out notice, even if the account statement also reflects the fee. The opt-out notice should stand alone and be usable without reference to other materials.
- Alternative Overdraft Options, §230(b)(6): We strongly support the requirement that the opt-out notice include information about other overdraft services offered by the financial institution. Lower cost options should not be kept only for those who can discover them on their own, or offered to some customers and not others. However, as we discussed in Section II, we also urge the Board to require financial institutions to disclose the cost of all programs in terms of the annual percentage rate. Otherwise, the lower-cost line of credit may look deceptively more expensive than the overdraft loan program, since APR disclosures are required for lines of credit.

VIII. Section 230.10(c): Initial opt-out notice must be given to all account holders.

We support the Board's chosen language in §230.10(c)(1) that requires opt-out notification before a financial institution may assess any fee for covering an overdraft. However, we ask the Board to change the analysis that this requirement only applies to accounts opened after the effective date of the final rule. The rule's language makes this requirement applicable to all account holders, and that is essential. The opt-out notice is an attempt to protect consumers from an unfair practice, and part of the protection is that a consumer will receive a notice before

the bank assesses a fee. This is a warning and chance for those consumers who understand the notice to make a decision about whether they want to participate in the program. Current account holders should not receive less protection than new account holders. Therefore we urge the Board to make clear in the analysis that this provision will be applied to current as well as new account holders.

We suggest adding another provision under §230.10(c): The rule could be improved by specifying that opt-out notification be given at the time of account opening in an easy to understand form that allows the consumer to check a box or sign the form and submit it along with other account opening papers. If the consumer does not turn in the form at the time of account opening, the opt-out notice should be provided in a paper form which the consumer can retain, and without further information, fill out and send in at a later time. See Section III for more recommendations on the timing of opt-out notices.

IX. Section 230.11(a): Aggregate fee and balance disclosure requirements should apply to all financial institutions.

Section 230.11(a) governs the disclosure of aggregate fee disclosures. We strongly support the Board's decision to apply this subsection to all financial institutions, whether or not they promote the payment of overdrafts. Whether or not the financial institution advertises the program does not change the benefit to consumers of clear notification of their aggregate fees. It is essential that all consumers who are subject to overdraft fees are protected by the same disclosure rules and we support the Board's decision to apply this requirement to all institutions.

X. Section 230.11(c): Balances should not reflect funds that are subject to a check hold.

Section 230.11(c) prohibits institutions from disclosing a balance, on all automated systems, that reflects funds the institution may provide to cover an overdraft. We strongly support this provision because this practice is fundamentally deceptive. Misstating the balance makes it much harder for a consumer to avoid overdrawing the account.

We suggest the following modification to §230.11(c): Balance inquiries can still be deceptive if the balance shows as available those deposited funds that are subject to a funds availability hold at the time the balance is requested. This practice has the same adverse consequences as misstating the balance by including overdraft coverage. It is misleading for a consumer to receive a balance that shows as available those funds that will trigger a fee if spent. We urge the Board to add a provision that would prohibit balances shown to the consumer from reflecting deposited funds as if they were fully available, when the funds are not yet available to the consumer. If the Board is hesitant to require this now, then the Board should define this as a recommended practice for one year, and then reconsider formally requiring this further level of accuracy for balance disclosures.

XI. There should be an early effective date.

The Agencies seek comment on the effective date. That date should be as early as possible. Overdraft loan fees take significant funds from families who have never consented to those programs. In the current economy, these funds are needed at the grocer, the gas pump, and many other places.

XII. Conclusion.

We applaud the Agencies for recognizing, through this proposed rule, that overdraft loan programs are inherently unfair if consumers are not clearly notified that they are enrolled in the service. The opt-out solution is a partial step forward, but it does not go far enough to protect the disproportionate number of consumers who are affected by these unfair practices. We respectfully ask that you strengthen this rule to provide consumers the right to affirmatively opt in to overdraft loan programs rather than opt out. If the Agencies decide to keep the opt-out, we suggest limiting it to check and ACH payments, with affirmative opt-in required for overdraft loans triggered by debit card initiated overdraft payments. In addition, we ask that the Agencies prohibit an overdraft fee from being assessed until after the first overdraft instance when explicit opt-out notice is given. This will help protect consumers from the opt-out system which allows them to be enrolled by default in expensive loan programs.

We look forward to the continuing work of the Board, the OTS, and the NCUA on these important issues.

Sincerely,



Lauren Zeichner
Staff Attorney
Financial Services Campaign
Consumers Union

cc: JoAnn Johnson, Chairman, NCUA Board
Mary F. Rupp, Secretary, NCUA Board
John M. Reich, Director, OTS

Appendix B



Final Report

Financial Regulation Poll

**For Public
Release**

**February 13, 2009
NRC #2009.07**

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Methodology

- Telephone surveys were conducted among 1,001 random adults comprising 500 men and 501 women 18 years of age and older. Respondents were screened for possession of a checking account with either an ATM card or a debit card. The analysis is based on the 679 adults who reported having a checking account with ATM or debit card. Interviewing took place over February 5-8, 2009.
- The questionnaire was fielded via Opinion Research Corporation's Caravan twice-weekly national telephone omnibus survey. ORC used random digit dialing to achieve a nationally representative probability sample and weighted completed interviews by age, sex, geographic region and race.
- The results of this study are intended for external communications. Methodology statement for public release:

The Consumer Reports National Research Center conducted a telephone survey using a nationally representative probability sample of telephone households. 679 interviews were completed among adults aged 18+ who reported having a checking account with an ATM card or a debit card. Interviewing took place over February 5-8, 2009. The sampling error is +/- 3.8% at a 95% confidence level.



Implications

- This study was commissioned to investigate consumers' beliefs about current bank policies involving overdraft fees, and how consumers prefer that banks handle overdrafts.
- Only qualified respondents participated in this telephone survey. Around 7 in 10 (69%) satisfied the two screening criteria—have a checking account and an ATM card or debit card—and were allowed to proceed (page 5).
- Our analysis indicates that many consumers are misinformed about common bank overdraft policies. They also expressed strong preferences for policies that are more favorable toward bank customers.
- Only half (52%) of respondents with a debit card had the correct impression of how banks commonly treat debit card overdrafts—namely, the bank allows the transaction to proceed, covers the shortage from the next deposit and also charges a fee. More young consumers aged 18-34 years (68%) expressed accurate knowledge of bank policy. In contrast, more than one-quarter (28%) erroneously thought that the bank would block an overdraft debit purchase, and 11% thought the bank would allow it to proceed and recover the difference later without charging a fee. Those aged 55+ years demonstrated the poorest understanding (page 6).
- Consumers are even more misinformed about ATM overdrafts. Only 31% correctly said that the bank will permit the transaction, subsequently dock the account and charge for the loan. In contrast, nearly half (48%) incorrectly said the ATM card would not work at all if the account balance were too low. Although 1 in 10 understood the first two components of the policy—the transaction proceeds, is covered later—they were unaware of the fee (page 7).



Implications (cont.)

- The majority of consumers prefer bank overdraft policies that are more favorable to them. Two-thirds said they want an opt-in policy, where banks cannot cover overdrafts—and charge for the service—unless a customer expressly authorizes the service. Only 27% preferred an opt-out policy, which allows banks to provide overdraft loans for a fee until the customer instructs otherwise (page 8).
- Moreover, two-thirds (65%) of consumers said that banks should deny a debit card or ATM transaction outright if it would overdraw the account. Young consumers, those with household income under \$40,000 and women were most likely to express this viewpoint. Only one-third said the bank should permit the transaction, even if they incur a fee (page 9).
- Regardless of whether a bank follows an opt-in or opt-out policy for overdrafts, consumers don't want the notification buried in their regular bank statement. To the contrary, three-quarters (74%) said they should be notified in a separate letter (page 10).
- Consumers also don't want to be punished for declining the bank's overdraft service. Overall, 73% of respondents said they should receive the same type of bank account whether or not they agree to pay for an overdraft service. Young, female and low-income consumers had the strongest feelings about this (page 11).
- If the law were changed to require that banks follow an opt-in policy, overwhelmingly (90%) consumers want to receive notification before they incur additional fees (page 12).
- Overall, 14% of consumers recalled being assessed an ATM or debit card overdraft fee during the past six months (page 13).



Screening Criteria

- Consumers were screened to ensure that they have a checking account plus associated ATM card or debit card. Those who failed to satisfy these requirements were not qualified to participate.
- Overall, nearly 7 in 10 consumers (69%) contacted by telephone said they have both a checking account and ATM or debit card. These individuals (679 total) proceeded with the survey.
- Qualified consumers disproportionately were:
 - ✓ High-income (90% of those reporting household earnings of \$75,000 or more satisfied the screeners)
 - ✓ Middle-aged (75% of those 35-54 years old qualified)
 - ✓ Residents of the West (74%) or South (70%)

QD1A-C - Please tell me which of the following you have.

	Gender		Age				Household Income			Region			
	TOTAL %	Men %	Women %	18-34 %	35-54 %	55+ %	<\$40K %	\$40-74K %	\$75K+ %	NE %	NCent %	South %	West %
Checking account	84	83	85	73	87	92	70	91	98	84	83	85	85
Checking account with ATM or debit card (Net)	69	69	68	68	75	62	52	76	90	66	63	70	74
ATM card with checking account	65	66	64	62	72	58	50	72	84	65	57	65	71
Debit card with checking account	62	62	61	64	68	50	48	68	81	61	57	60	68
Don't know/Refused	2	1	3	2	1	3	1	1	1	1	3	3	1
NO ANSWER	14	16	13	25	13	6	29	8	2	15	14	13	15



Overdraft via Debit Card Base: Checking With Debit Card

- Only half (52%) of respondents with a debit card correctly described banks' typical policy regarding debit card overdrafts—the bank permits the transaction, docks your next deposit and charges you for the loan. Young (68%) and low-income (57%) consumers were most likely to understand debit card policy.
- Nearly half of consumers are misinformed. Almost 3 in 10 (28%) of respondents said the bank would block the transaction, and an additional 1 in 9 (11%) expected the bank to allow the purchase and deduct the shortage later without imposing a fee.
- Overall, older consumers (aged 55+ years) were the least informed. At least 30% of respondents aged 35 years or more thought that the bank would deny a debit purchase if it would overdraw the account.

QD2 - If you had \$25 in your checking account and you tried to make a \$40 purchase with your debit card, what do you think would happen?

Base: Checking Account With Debit Card

	Gender		Age			Household Income			Region		
	Men %	Women %	18-34 %	35-54 %	55+ %	≤\$40K %	\$40-74K %	\$75K+ %	NC/MI %	South %	West %
TOTAL	52	50	68	47	39	57	44	53	52	49	54
Your bank would allow the purchase and then deduct the shortage from your next deposit, and also charge you a fee	28	29	22	32	30	29	30	30	31	36	25
Your bank wouldn't allow you to make the purchase	11	10	6	12	15	8	15	10	9	8	11
Your bank would allow the purchase and then deduct the shortage from your next deposit	9	9	4	8	17	7	10	6	8	4	10
Don't know/Refused											



Overdraft via ATM Card

Base: Checking With ATM or Debit Card

- Consumers evaluated a companion scenario about overdrafts at an ATM machine. Only 31% knew what the most-likely result would be—the bank permits the overdraft, docks the account later on and tacks on a fee. Young (42%) and low-income (39%) respondents revealed the highest awareness of actual bank policy.
- In contrast, nearly half (48%) of consumers incorrectly said the ATM card would not work if they attempted to overdraw. Another 10% said the bank would permit the withdrawal and cover the shortage with their next deposit.

QD3 - If you had \$25 in your checking account and you tried to take \$40 out of the ATM machine,

what do you think would happen?

Base: Checking Account With ATM or Debit Card

	Gender		Age				Household Income				Region		
	Men	Women	18-34	35-54	55+	<\$30K	\$30-74K	\$75K+	NE	NCentl	South	West	
TOTAL	50	47	44	56	43	43	49	49	47	47	52	45	
%	31	33	42	27	27	39	27	34	34	36	25	36	
Your ATM card wouldn't work	10	11	7	10	15	8	11	10	11	15	9	8	
Your bank would allow the withdrawal and then deduct the shortage from your next deposit and also charge you a fee	10	9	7	8	15	9	13	7	7	2	14	12	
Your bank would allow the withdrawal and then deduct the shortage from your next deposit													
Don't know/Refused													



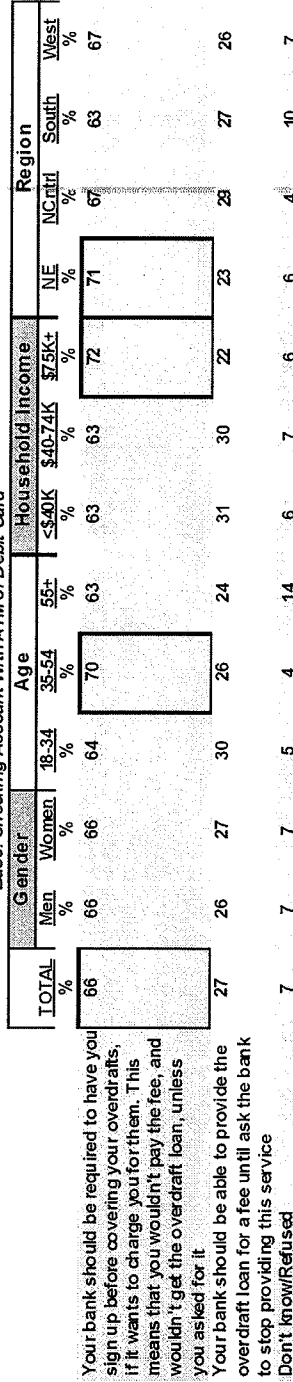
Overdraft Fee Policy Preference

Base: Checking With ATM or Debit Card

- After the two questions about beliefs regarding bank overdraft policy, the telephone interviewer explained to respondents how banks usually treat debit and ATM overdrafts, and then asked them to indicate a preference for opt-in vs. opt-out.
- Two-thirds of consumers said they prefer to expressly authorize overdraft coverage, so that there would be no overdraft loan—or fee—until they opted into the service. More high-income and middle-aged consumers chose opt-in than others, along with Northeasterners.
- Only 27% of respondents preferred an opt-out policy, where the bank provides overdraft coverage and charges a fee until the customer requests otherwise.

QD4 - When you use your debit or ATM card and make a purchase or a withdrawal for more than you have in your account, your bank may charge you a fee to cover the overdraft. This is a fee-based overdraft loan service, which your bank may call overdraft protection. If your bank provides this service, which policy do you prefer?

Base: Checking Account With ATM or Debit Card





Deny vs. Cover Overdraft

Base: Checking With ATM or Debit Card

- This question focused on whether consumers want an overdraft transaction to proceed. Two-thirds (65%) said that banks should deny a debit card or ATM transaction if the checking account balance is too low. Young and low-income consumers, and women, were mostly likely to express this preference.
- One-third of respondents—disproportionately middle-aged and male—want the bank to cover the transaction, even if a fee is involved.

QD5 - If you don't have enough money in your account to cover a debit card or ATM transaction,

what do you want your bank to do?

Base: Checking Account With ATM or Debit Card

	Gender		Age			Household Income			Region			
	Men %	Women %	18-34 %	35-54 %	55+ %	<\$40K %	\$40.74K-\$75K+ %	>\$75K+ %	NE %	NCentral %	South %	West %
TOTAL	65	33	65	33	33	65	33	33	33	33	33	33
Your bank should deny the transaction	63	68	73	63	62	70	66	63	67	64	65	66
Your bank should cover transaction, even if it costs you a fee	36	29	25	37	34	29	32	34	31	35	32	32
Don't know/Refused	2	2	2	1	4	1	2	2	2	1	2	2



Opt-in/Opt-out Notification Preference

Base: Checking With ATM or Debit Card

- A strong majority of respondents (74%) said they want to be notified about signing up for or canceling a fee-based overdraft loan service in a separate letter.
- In contrast, only 23% would like notification via the bank statement.

QD6 - How do you want your bank to notify you about signing up for or canceling a fee-based overdraft loan service?

Base: Checking Account With ATM or Debit Card

TOTAL	Gender		Age				Household Income				Region			
	Men	Women	18-34	35-54	55+	<\$40K	\$40-74K	\$75K+	NE	NC	South	West		
74	74	75	72	76	78	69	74	76	68	75	76	76		
23	23	22	26	23	18	27	25	22	29	23	21	20		
3	3	3	2	1	6	3	1	2	4	2	3	4		

In a separate letter from the bank
 On your bank statement
 Don't know/Refused



Punitive Pricing Base: Checking With ATM or Debit Card

- Nearly three-quarters (73%) said that a checking account should cost the same regardless of whether the customer declines the bank's overdraft service. Segments that were most adamant: age 18-34 years, women, low-income.
- One-quarter (24%) of respondents said the bank should be able to set its product offering and pricing.

QD7 - Should your bank be permitted to charge you more for basic banking if you decline the overdraft service?

Base: Checking Account With ATM or Debit Card

TOTAL %	Gender		Age			Household Income			Region			
	Men %	Women %	18-34 %	35-54 %	55+ %	≤\$40K %	\$40-74K %	\$75K+ %	NE %	NCMI %	South %	West %
73	68	77	79	71	68	76	71	74	72	76	71	73
24	29	19	18	27	26	20	26	24	23	20	27	24
3	2	4	3	2	5	5	3	2	4	4	2	3

No, you should receive the same type of bank account whether or not you agree to pay for an overdraft service
 Yes, the bank should be able to decide what products to offer and at what price
 Don't know/Refused



Notification After Regulatory Change

Base: Checking With ATM or Debit Card

- Overwhelmingly, respondents said that if an opt-in law is passed, banks should have to notify existing customers about their rights before they incur additional fees.
- Only 1 in 11 respondents felt that the bank should be able to charge an initial fee before notifying existing customers of their new rights.

QD8 - Suppose that a new law requires that the bank get your permission before assessing an overdraft fee. When would you want to be notified of your new rights?

Base: Checking Account With ATM or Debit Card

	Gender		Age			Household Income				Region		
	Men	Women	18-34	35-54	55+	<\$40K	\$40-74K	\$75K+	NC/MI	NE	South	West
TOTAL	87	11	9	9	8	91	93	7	1	2	1	1
%	87	11	9	9	8	91	93	7	1	2	1	1
Before being charged any additional fees												
After being charged the first fee in order to avoid future fees												
Don't know/Refused												



ATM-Debit Card Fees

Base: Checking With ATM or Debit Card

- Overall, 14% of consumers recalled being assessed a fee for an ATM or debit card overdraft during the past half-year. Respondents aged 18-34 years (26%) were most likely to be aware of a fee.

QD9 - In the PAST 6 MONTHS, have you been charged a fee by your bank for using your debit card to make a purchase or your ATM card for an ATM withdrawal that exceeded the balance in your account?

Base: Checking Account With ATM or Debit Card

	Gender		Age			Household Income			Region			
	Men	Women	18-34	35-54	55+	≤\$30K	\$40-74K	\$75K+	NE	NC/MT	South	West
TOTAL	14	15	26	10	7	18	16	11	11	8	16	19
Yes	85	85	72	90	92	80	84	89	87	91	83	81
No	1	0	2	1	1	2	2	1	1	1	0	0
Don't know/Refused												



Profile

- Women and men were equally represented in the poll, and the median age of respondents was 44 years.
- Overall, 43% of participants reported having at least a four-year college degree, but 30% had no education beyond high school.
- Median household income of interviewed consumers was about \$66,000, and 46% said they are employed full time.
- Most respondents (59%) said they are married, and around 8 in 10 identified themselves as Caucasian.

Profile

Base: Checking Account With ATM or Debit Card

	TOTAL	Gender		Age			Household Income		
		Men	Women	18-34	35-54	55+	<\$40K	\$40-74K	\$75K+
	%	%	%	%	%	%	%	%	%
UNWEIGHTED BASE	679	346	333	104	256	318	155	183	245
GENDER									
Male	49	100		45	52	49	44	42	58
Female	51		100	55	48	51	56	58	42
AGE									
18-34	30	28	33	100			44	35	15
35-44	20	23	17		48		7	20	32
45-54	22	21	22		52		16	19	31
55-64	15	16	15			55	13	15	16
65+	13	12	14			45	20	11	6
Refused/Nr	0		0						
MEDIAN (Years)	43.9	43.8	45.0	26.0	45.3	63.2	43.4	41.6	45.9
EDUCATION									
Some HS or less	7	8	5	12	4	5	12	5	3
HS graduate	23	22	24	29	19	23	37	27	12
Some college	26	24	29	25	27	26	28	29	23
College grad+ [Net]	43	45	41	33	51	43	22	39	62
College grad	27	29	26	24	33	23	14	29	37
Postgrad degree	15	16	15	9	17	20	8	10	25
Refused/Nr	1	1	2	1	1	3		0	
HOUSEHOLD INCOME									
Under \$25,000	12	10	14	24	5	11	48		
\$25,000 but less than \$50,000	20	17	23	21	16	28	52	24	
\$50,000 but less than \$75,000	24	22	25	29	21	22		76	
\$75,000 but less than \$100,000	14	17	12	6	22	11			37
\$100,000 or more	25	29	20	14	34	21			63
Refused	5	5	5	6	2	8			
MEDIAN (000s)	\$65.8	\$73.2	\$59.6	\$52.0	\$83.5	\$58.2	\$26.0	\$58.6	\$121.0

Profile (cont.)

Base: Checking Account With A TM or Debit Card

	Gender		Age			Household Income			
	TOTAL	Men	Women	18-34	35-54	55+	<\$40K	\$40-74K	\$75K+
	%	%	%	%	%	%	%	%	%
UNWEIGHTED BASE	679	346	333	104	256	318	155	183	245
EMPLOYMENT									
Employed full time	46	54	38	38	65	26	27	48	62
Retired	17	16	18		4	54	23	15	11
Not currently employed	14	8	21	27	10	7	18	19	7
Self-employed	12	15	10	12	15	8	11	12	13
Employed part time	10	7	14	22	5	5	20	6	7
Refused/Nr	0		0		0		1		
MARITAL STATUS									
Married	59	62	56	44	70	58	30	67	77
Single and never been married	21	23	19	50	10	5	35	15	13
Divorced	9	7	10	1	10	14	18	9	3
Widowed	5	3	7		1	17	10	4	2
Living as married	3	3	3	3	3	2	4	2	3
Separated	2	2	3	1	4	0	3	3	2
Refused/Nr	1	1	2	1	1	3	0		0
RACE									
White/Caucasian	79	79	80	68	81	89	74	75	86
Black/African-American	10	8	12	15	9	5	12	16	3
Asian/Asian-American	1	1	1	2	0	1	1	1	1
Some other race	11	13	9	15	10	7	15	9	10
Refused/Nr	1	1	1	1	2	0	1	0	0
*Multiple responses allowed									
REGION									
Northeast	18	16	20	19	20	15	18	16	20
North Central	20	21	20	21	24	15	26	19	21
South	37	39	36	41	34	38	31	40	34
West	24	24	24	19	23	32	25	25	25



Appendix: Survey Questions

FINANCIAL REGULATIONS

D

FEBRUARY 5-8, 2009

718068

1

On another subject . . .

D1 Please tell me which of the following you have. Do you have a . . .
[DO NOT ROTATE ITEMS]

- 01 YES
- 02 NO
- 99 DON'T KNOW/REFUSED

- A. Checking account
- B. ATM card [ASK IF D1A (01)]
- C. Debit card [ASK IF D1A (01)]

IF HAVE CHECKING ACCOUNT AND ATM CARD OR DEBIT CARD, [D1A (01) AND (D1B (01)
OR D1C (01))], CONTINUE.
ALL OTHERS SKIP TO NEXT SECTION

ROTATE ASKING ORDER OF D2-D3

[ASK IF D1C (01)]

D2 If you had \$25 in your checking account and you tried to make a \$40 purchase with your debit
card, what do you think would happen? Would you say . . .
[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER]

- 01 Your bank wouldn't allow you to make the purchase
- 02 Your bank would allow the purchase and then deduct the shortage from your next deposit
- 03 Your bank would allow the purchase and then deduct the shortage from your next deposit
and also charge you a fee
- 99 DON'T KNOW/REFUSED

D3 If you had \$25 in your checking account and you tried to take \$40 out of the ATM machine, what
do you think would happen? Would you say . . .
[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER]

- 01 Your ATM card wouldn't work
- 02 Your bank would allow the withdrawal and then deduct the shortage from your next
deposit
- 03 Your bank would allow the withdrawal and then deduct the shortage from your next
deposit and also charge you a fee
- 99 DON'T KNOW/REFUSED

FINANCIAL REGULATIONS

D

FEBRUARY 5-8, 2009

718068

2

- D4 When you use your debit or ATM card and make a purchase or a withdrawal for more than you have in your account, your bank may charge you a fee to cover the overdraft. This is a fee-based overdraft loan service, which your bank may call overdraft protection.

If your bank provides this service, which policy do you prefer?
[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER. ROTATE]

- 01 Your bank should be required to have you sign up before covering your overdrafts, if it wants to charge you for them. This means that you wouldn't pay the fee, and wouldn't get the overdraft loan, unless you asked for it (OR)
02 Your bank should be able to provide the overdraft loan for a fee until you ask the bank to stop providing this service (OR)
99 DON'T KNOW/REFUSED

- D5 If you don't have enough money in your account to cover a debit card or ATM transaction, what do you want your bank to do? Would you say . . .

[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER. ROTATE]

- 01 Your bank should deny the transaction (OR)
02 Your bank should cover the transaction, even if it costs you a fee (OR)
99 DON'T KNOW/REFUSED

- D6 How do you want your bank to notify you about signing up for or canceling a fee-based overdraft loan service? Would you say . . .

[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER. ROTATE]

- 01 On your bank statement (OR)
02 In a separate letter from the bank (OR)
99 DON'T KNOW/REFUSED

- D7 Should your bank be permitted to charge you more for basic banking if you decline the overdraft service? Would you say . . .

[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER. ROTATE]

- 01 Yes, the bank should be able to decide what products to offer and at what price (OR)
02 No, you should receive the same type of bank account whether or not you agree to pay for an overdraft service (OR)
99 DON'T KNOW/REFUSED

- D8 Suppose that a new law requires that the bank get your permission before assessing an overdraft fee. When would you want to be notified of your new rights? Would you say . . .

[READ ENTIRE LIST BEFORE RECORDING ONE ANSWER]

- 01 Before being charged any additional fees
02 After being charged the first fee in order to avoid future fees
99 DON'T KNOW/REFUSED

FINANCIAL REGULATIONS

D

FEBRUARY 5-8, 2009

718068

3

D9 In the PAST 6 MONTHS, have you been charged a fee by your bank for using your debit card to make a purchase or your ATM card for an ATM withdrawal that exceeded the balance in your account?

01 YES
02 NO
99 DON'T KNOW/REFUSED

Exhibit F



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Most Americans Unaware of Impending Regulatory Changes Regarding Overdrafts

Less than one in three are likely to opt-in for a fee-based service

New York, N.Y. - May 20, 2010 - While much has been written in the press about impending changes to the laws regarding the fees associated with bank-provided overdrafts, these messages are not getting through to most consumers. Only one-quarter (27%) of consumers claim to know all about the new regulations. Most have just heard a little (37%) or never heard of the changes (36%), meaning the banks still have work to do with their customers. This general lack of awareness of overdraft fees probably derives from the fact that only one in five Americans (19%) report having ever overdrawn their account within the past year.

These are some of the findings of a new **Harris Poll** survey of 2,755 U.S. adults, surveyed online between April 12 and 19, 2010 by **Harris Interactive**.

Only 29% report that they are likely to opt-in for the fee-based service under the new rules. Half (51%) are not likely to opt-in, while 20% of those with an ATM or debit card say they still need more information to be able to decide. Married women are more likely than single women to opt-in (31% vs. 23%) and households with children are also more likely than those without to do so (35% vs. 27%). This probably reflects the notion of "married and harried households," which would be more likely to pay for convenience-related services.

Attitudes towards banks

There is a sense of ill will towards banks. Over two-thirds (68%) believe that banks have been taking advantage of their customers by charging fees without getting explicit consent to do so. Having some of this overdraft protection in place may help. Over half of those with ATM or debit cards (57%) would like to have the ability to decide on the spot whether to overdraft or not, based on the situation and the nature of the transaction. This type of banking flexibility goes a long way toward making customers feel as if the bank cares about them.

So what?

Consumer sentiment is largely negative in the banking industry as a whole. There is a need to focus efforts on rebuilding trust and building connection with customers. Transparency is key.

In general, the trend is that consumers are willing to remain with their existing banks but many are seeking a more local experience where they feel appreciated and secure in the service they are getting. Again, an opportunity to build a stronger connection exists here but banks have to be willing to make the commitment to do so.

Willingness to opt-in to overdraft agreements is lukewarm for most segments of the population; however, consumers are not averse to discussing alternative options. On-the-spot approval of overdrafts is enticing for many consumers, as are alternative agreements that help customers manage their finances more effectively.

TABLE 1

CHANGING REGULATIONS ON OVERDRAFTS

"Historically, when a customer used their ATM or debit card and their account did not have enough money to pay for the transaction, banks would approve the transaction, create an overdraft, and then sometimes charge a fee for the overdraft service. New regulations now require that customers sign an agreement on a yearly basis to permit the bank to approve these types of ATM or debit card transactions. Unless the customer has 'opted-in' to the service in advance, when an account has insufficient funds, the transaction will be denied. Were you aware that regulations were changing with respect to overdrafts on electronic transactions from bank accounts?"

Base: Adults with a bank account

	Total
	%
Know all about it	27
Heard a little about it	37
Never heard of it	36

Note: Percentages may not add to 100% due to rounding

TABLE 2

OPT-IN TO OVERDRAFT AGREEMENT

"Under the new laws you can opt-in to allow your bank to automatically approve overdrafts when you have insufficient funds. There would be a fee and you could opt-out at any time. How likely do you think you will be to opt-in to the overdraft

agreement?"

Base: Adults with an ATM or debit card

	Total	Marital Status		Children in HH	
		Single Women	Married Women	Children in HH	No Children in HH
		%	%	%	%
Likely (NET)	29	23	31	35	27
Extremely likely	5	4	4	6	4
Very likely	9	5	12	12	8
Somewhat likely	15	15	15	16	15
Not likely (NET)	51	52	45	41	56
Not very likely	17	18	16	13	20
Not at all likely	34	34	29	28	36
Not sure - I would need more information	20	25	23	24	18

Note: Percentages may not add to 100% due to rounding

TABLE 3
PERSONAL OVERDRAFT HISTORY

"In the last 12 months have you made an ATM withdrawal or debit card purchase for more money than you had in your account?"

Base: Adults with a bank account

	Total
	%
Yes (NET)	19
Yes, but there were no overdraft fees.	6
Yes, and there were overdraft fees.	12
No (NET)	77
No, but I knew that my bank would overdraft my account if I did not have enough funds.	48
No, I was not aware that my bank would automatically overdraft my account.	16
Not sure	13

Note: Percentages may not add to 100% due to rounding

TABLE 4
PERSPECTIVES ON OVERDRAFT SERVICES AND REGULATIONS

"Below are some possible perspectives on the overdraft service and upcoming regulations. Please tell us how well these describe your opinions on the subject."

Base: Adults with a ATM or debit card

	Agree (NET)	Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Disagree (NET)	Somewhat Disagree	Strongly Disagree
	%	%	%	%	%	%	%
I feel that banks have been taking advantage of their customers by charging fees without getting explicit consent to do so.	68	39	29	18	13	7	6
I'd like to have the ability to decide on the spot whether to overdraft or not based on the situation and the nature of the transaction.	57	29	28	27	16	7	9
I feel that the automatic							

overdraft service is a valuable service that banks offer.	39	10	28	31	31	14	17
I am reassured knowing that if I run out of funds, the bank will automatically overdraft to cover the transaction.	36	11	25	32	32	13	19
I am concerned that the overdraft service will make it too easy for me to spend more than I can afford.	31	14	17	23	46	14	32

Note: Percentages may not add to 100% due to rounding

Methodology

This **Harris Poll** was conducted online within the United States between April 12 and 19, 2010 among 2,755 adults (aged 18 and over). Figures for age, sex, race/ethnicity, education, region and household income were weighted where necessary to bring them into line with their actual proportions in the population. Where appropriate, these data were also weighted to reflect the composition of the adult online population. Propensity score weighting was also used to adjust for respondents' propensity to be online.

All sample surveys and polls, whether or not they use probability sampling, are subject to multiple sources of error which are most often not possible to quantify or estimate, including sampling error, coverage error, error associated with nonresponse, error associated with question wording and response options, and post-survey weighting and adjustments. Therefore, Harris Interactive avoids the words "margin of error" as they are misleading. All that can be calculated are different possible sampling errors with different probabilities for pure, unweighted, random samples with 100% response rates. These are only theoretical because no published polls come close to this ideal.

Respondents for this survey were selected from among those who have agreed to participate in Harris Interactive surveys. The data have been weighted to reflect the composition of the adult population. Because the sample is based on those who agreed to participate in the Harris Interactive panel, no estimates of theoretical sampling error can be calculated.

These statements conform to the principles of disclosure of the National Council on Public Polls.

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Q765, 770, 775, 780

The Harris Poll[®] #68, May 20, 2010

By Sandy Brumley, Vice President, Financial Services Research Group, Harris Interactive

About Harris Interactive

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Exhibit G

Design and Testing of Overdraft Disclosures: Phase Two

Submitted to:
Board of Governors of the Federal Reserve System

October 12, 2009

Submitted by:

ICF **MACRO**
an ICF International Company

Design and Testing of Overdraft Disclosures: Phase Two

Submitted to:

Board of Governors
of the Federal Reserve System
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EXECUTIVE SUMMARY

BACKGROUND OF PROJECT

In May 2008, the Board of Governors of the Federal Reserve System (the “Board”) published proposed amendments related to overdraft coverage to Regulation DD, which implements the Truth in Savings Act. The proposed rules required that disclosures be provided to consumers about their overdraft coverage and the right to opt out of that coverage.¹ The Board’s proposed rules included model notices that institutions could use to satisfy their disclosure obligations.

Because these model notices would constitute a “safe harbor” for institutions that use them, a key objective for the Board was that they be as clear as possible to consumers. For this reason, the Board contracted with ICF Macro in March 2008 to assist it in the development and testing of model disclosures related to overdraft coverage. ICF Macro began by advising the Board on the development of the sample notices that were released with its May 2008 proposal. Following the public comment period, ICF Macro worked with Board staff to revise the notices based on comments that were received by depository institutions, consumer groups, and other public stakeholders. ICF Macro then engaged in two rounds of cognitive interviews with consumers to test the effectiveness and clarity of the model notices, and made appropriate revisions to the format and language used. ICF Macro summarized findings from these two rounds of interviews in a report to the Board in December 2008.²

In January 2009 the Board published a revised proposal under Regulation E, which implements the Electronic Fund Transfer Act. This proposal included both a revised model notice regarding the consumer’s right to opt out of overdraft coverage for ATM and everyday debit card transactions,³ and an alternative model notice regarding the consumer’s right to opt into that coverage. After receiving public comment on these amendments, the Board again contracted with ICF Macro to provide support in the testing and revision of these model notices. Between May and September 2009, ICF Macro conducted four additional rounds of cognitive interviews with consumers to test the effectiveness of revised overdraft notices. This report describes findings from this most recent phase of ICF Macro’s work related to design and testing of overdraft notices for the Board.

¹ Separate revisions to Regulation AA proposed by the Board would have required banks to provide customers with the right to opt out of overdraft coverage. Regulation AA implements section 5(a) of the Federal Trade Commission Act to prohibit unfair or deceptive practices.

² This report is available online at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a6.pdf>.

³ As described below, “everyday debit card transactions,” which are debit card transactions that are non-recurring, such as a purchase at a store, were referred to by a number of labels on different notices. In this executive summary we use the term “everyday,” because it was the clearest to consumers and will be used in the model forms published by the Board.

The results of the consumer research described in this report will inform the Board's final revisions to Regulation E (to be issued in November 2009), and the notice that was developed will be included as a model. By relying heavily on consumer testing in the development of this notice, the Board hopes to ensure that its new regulations will lead to disclosures that are easy for consumers to read and understand, and as a result will help them make well-informed financial decisions.

RESEARCH METHODOLOGY

After the public comment period ended, Board staff and ICF Macro made revisions to the proposed overdraft notices that had been published in January 2009. ICF Macro then began conducting one-on-one in-depth cognitive interviews with consumers. The goal of these interviews was to assess the extent to which these disclosures were effective in communicating information to consumers about how their overdrafts would be handled by their bank, what fees they could potentially be charged, and what choices they had related to overdrafts.

Interview participants were recruited by telephone using a structured screening instrument developed collaboratively by ICF Macro and Board staff. Participation was limited to people who were the primary financial decision-maker in their households, and who had a checking account. Respondents who worked for a bank or credit union were excluded from participation. Other screening questions ensured the recruitment of participants with a range of ethnicities, ages, and education levels.

Interviews were approximately 60 minutes long, and were based on an interview guide developed collaboratively by ICF Macro and Board staff. While the guide was updated for each round, the basic structure of the interviews remained consistent. Participants were first asked a series of questions about their check and debit card use. They were then shown a notice on overdraft practices for a fictional bank called Solar Bank and asked to review it just as they would if they were opening a checking account. They were asked to "think aloud" while they read the document, and to let the interviewer know if they had any questions or saw anything that they found particularly confusing, surprising, or interesting. Once participants completed their initial review of the document, they were asked both comprehension questions to test their understanding of the disclosure content and attitudinal questions that asked how they felt about the information on the notice.

In Rounds 1 and 2, each participant was shown two types of notices.⁴ The first notice indicated to consumers that the bank would cover overdrafts for all types of transactions, but that if they wished they could opt out of coverage for ATM and everyday debit card transactions. The second notice indicated that the bank would not cover overdrafts for ATM and everyday debit card transactions, but would cover overdrafts for other types of transactions; however, the notice provided that customers could opt into coverage for ATM and everyday debit card transactions.

⁴ This set of interviews was actually the third round conducted by ICF Macro for the Board on the topic of overdrafts. However, because this phase of research was distinct from that carried out by ICF Macro in 2008, the first set of interviews in 2009 is referred to in this report as "Round 1."

These two notices are referred to in this report as the “opt-out” and “opt-in” notices, respectively. The goal of showing both notices was to assess consumers’ reaction to the two approaches, and to evaluate whether one approach might be easier for consumers to understand. The order in which these notices were shown to participants was varied in order to avoid learning effects. Participants in Rounds 3 and 4 were shown only an “opt-in” notice.

KEY RESEARCH FINDINGS

Understanding of Overdraft Practices

- In the first two rounds, almost all participants understood that if they had overdraft coverage and the bank paid an overdraft, the bank would charge them a fee for doing so. In Round 3, however, four of the nine participants mistakenly thought that having “overdraft coverage” meant that their overdrafts would be paid and they would not be charged a fee. This misconception appeared to be based on the phrase “overdraft coverage,” which implied to participants that their overdrafts would be authorized free of charge. The notice used in Round 4, which did not include this phrase, appeared to address this point of confusion; all but one participant in the final round understood that they would be charged a fee if they overdraw their account.
- The notices used in all four rounds of testing indicated that the bank had discretion in deciding whether to cover overdrafts, and did not guarantee that all overdrafts would be paid regardless of the type of transaction. Most participants understood this after reading the notice, although comprehension of this fact was slightly lower in Rounds 3 and 4.
- Notices used in the first three rounds indicated that even if customers did not have overdraft coverage for a particular type of transaction, they could still overdraw their account under certain circumstances. About two thirds of participants in these rounds understood this after reading the notice. This information was removed from the notice in Round 4 because of concerns regarding information overload. When asked whether they might still overdraw their account using a debit card transaction even if the bank’s standard practice was not to pay these overdrafts, three of seven participants in the final round indicated that this was possible.
- In Round 1, two participants confused the “overdraft coverage” described on the notice with a link to a savings account. This pattern continued in the next two rounds, even though the notices used in those rounds specifically stated that overdraft coverage differed from alternative plans offered by the bank. As noted above, the notice used in the final round did not use the phrase “overdraft coverage,” but instead described the bank’s “standard overdraft practices.” This change eliminated much of participants’ confusion on this point; in Round 4 only one of 11 participants mistakenly thought that these standard practices included a link to another account.
- The notices used in Round 1 used the phrase “one-time debit card transaction” to refer to a non-recurring transaction made by a debit card (e.g., a purchase at a store). However,

only three of nine participants understood what this phrase meant. In the next two rounds, the notices used the terms “individual debit card transaction” and “one-time debit card transaction” again, but in both cases most participants still had difficulty interpreting this phrase. One participant in Round 3 suggested that “everyday debit card transaction” would be more understandable to consumers, so this term was used in Round 4. Comprehension of this phrase was much higher; nine of 11 participants in Round 4 could explain what it meant.

Understanding of Opt-Out Notice

- Participants in Rounds 1 and 2 were shown an “opt-out” notice, indicating that the bank provided overdraft coverage on all transaction types but that customers had the right to opt out of coverage for ATM and everyday debit card transactions. In Round 1, about half of participants understood that they would be enrolled in overdraft coverage even if they did nothing, and about half also understood their right to opt out. In Round 2, all but one participant understood that they were enrolled in overdraft coverage, but only two understood the right to opt out. In both rounds, those that did not understand their right to opt out incorrectly assumed that if they “opted out” they would have no coverage on any types of transactions.
- As noted above, participants in Rounds 3 and 4 were not shown an “opt-out” notice.

Understanding of Opt-In Notice

- Participants in all rounds were shown an “opt-in” notice that indicated that unless customers specifically asked it to do so, the bank would not cover ATM and everyday debit card transactions. These notices also stated that regardless of whether customers opted into coverage on these transactions, overdrafts on all other types of transactions (including checks) would be covered. However, less than half of participants in Rounds 1 and 2—and none of the participants in Round 3—understood after reading the opt-in notice that overdrafts by check would be covered even if they did nothing. The notice used in Round 4 was significantly more successful in this regard; six of nine participants in that round understood that their check transactions would be authorized.
- Most participants in the first three rounds understood after reading the notice that they had the right to opt into overdraft coverage.⁵ However, many incorrectly thought that their decision whether or not to opt in would affect all types of transactions, rather than just ATM and everyday debit card transactions. Again, the notice used in Round 4 explained this right more clearly; most participants understood that they had the right to ask the bank to cover transactions for ATM and everyday debit card transactions.

⁵ The exception was Round 2, where only four of nine participants understood that they had the right to opt into overdraft coverage.

Participants' Attitude toward Overdraft Coverage

- Among participants who had previously overdrawn their account and been charged a fee for doing so, about half said that they would have preferred that the bank deny the transaction. Most of these participants indicated that the transactions that had overdrawn their accounts were not important enough to them to warrant paying the fee they were charged. The other half of participants said that they were pleased that the bank paid the transaction that overdrawed their account, and were willing to pay a fee for this service. These participants indicated that it was important to them that their transactions be paid, or that they were concerned about the effect that having a transaction denied would have on their credit score. This pattern was consistent throughout all four rounds of testing.
- Among participants from all rounds, about half indicated after reading the notices that they would want overdrafts to be paid for ATM and everyday debit card transactions. However, in many cases the reasoning behind this decision was unclear. In some cases, participants said that they would want these overdrafts covered, but only through a link to another account or line of credit where they might be charged fewer fees. Other participants initially said that they did not want these overdrafts to be covered, but later said that they would want coverage in case of emergencies. In a few cases, participants' decisions were affected by the fact that they did not fully understand the terms of this coverage—for example, in Round 3 there were some participants that thought they would not have to pay any fees if their overdrafts were paid.
- Less than a third of participants indicated that they would not want any overdrafts of any type to be paid by the bank. Most participants said that transactions they make by check tend to be larger in size and more important, so they would want overdrafts for checks to be paid even if it meant being charged a fee.
- When asked how they would contact their bank if they wanted to opt into or out of overdraft coverage, participants across the four rounds were evenly split between those who would go online and those who would call the bank. Only two participants indicated that they would prefer to use the tear-off form provided on the bottom of the notice. Because so few participants indicated that it would be useful, and because of some evidence that it led to confusion in some cases, this tear-off form was removed from the notice used in Round 4.

Preference for Opt-Out vs. Opt-In

- Over the first three rounds, participants overwhelmingly indicated that they would prefer that banks give them the right to opt into overdraft coverage on ATM and everyday debit card transactions, rather than enrolling them automatically and giving them the right to opt-out. Most participants expressed a general dislike of being signed up for something without their consent; one indicated that it would make him feel that the coverage had been “forced” on him.

- In Round 4, four of nine participants that were asked indicated that they would prefer to be enrolled in overdraft coverage automatically—a significantly higher proportion than in earlier rounds. However, at least two of these participants seemed not to fully understand the choice they were being offered. For example, one said that he preferred the “opt-out” strategy because it offered him more choice over his account, which would not seem to actually be the case.

Information about Alternative Ways of Covering Overdrafts

- The notices used in all four rounds included information about alternative ways that the bank could cover overdrafts, such as through a link to another account or an overdraft line of credit. Participants were generally able to find and understand this information, although a few were unsure what was meant by a “link to another account.” In some cases—particularly in the first three rounds—participants mistakenly thought that this link between accounts was the same as the “overdraft coverage” being described on the notices.
- When asked, all participants indicated that they would contact their bank for more information about these alternative ways of covering overdrafts. In many cases, this was because of the language on the notice that these alternatives “may be less expensive” than the bank’s standard ways of covering overdrafts.

SECTION I: INTRODUCTION

In May 2008, the Board of Governors of the Federal Reserve System (the "Board") published proposed amendments related to overdraft coverage to Regulation DD, which implements the Truth in Savings Act. The proposed rules required that disclosures be provided to consumers about their overdraft coverage and the right to opt out of that coverage.⁶ The Board's proposed rules included model notices that institutions could use to satisfy their disclosure obligations.

Because these model notices would constitute a "safe harbor" for institutions that use them, a key objective for the Board was that they be as clear as possible to consumers. For this reason, the Board contracted with ICF Macro in March 2008 to assist it in the development and testing of model disclosures related to overdraft coverage. ICF Macro began by advising the Board on the development of the sample notices that were released with its May 2008 proposal. Following the public comment period, ICF Macro worked with Board staff to revise the notices based on comments that were received by depository institutions, consumer groups, and other public stakeholders. ICF Macro then engaged in two rounds of cognitive interviews with consumers to test the effectiveness and clarity of the model notices, and made appropriate revisions to the format and language used. ICF Macro summarized findings from these two rounds of interviews in a report to the Board in December 2008.⁷

In January 2009, the Board published a revised proposal under Regulation E, which implements the Electronic Fund Transfer Act. This proposal included both a revised model notice regarding the consumer's right to opt out of overdraft coverage for ATM and everyday debit card transactions, and a model notice regarding the consumer's right to opt into that coverage. After receiving public comment on these amendments, the Board again contracted with ICF Macro to provide support in the testing and revision of these model notices. Between May and September 2009, ICF Macro conducted four additional rounds of cognitive interviews with consumers to test the effectiveness of revised overdraft notices.

This report describes this most recent phase of ICF Macro's work with the design and testing of overdraft notices for the Board. Subsequent sections of the report describe the testing methodology used, as well as findings from each of the four rounds of interviews. The report also details the iterative changes that were made to the model notices after each round, eventually leading to the development of a notice that both ICF Macro and the Board believe will be more effective than that proposed in January 2009.

⁶ Separate revisions to Regulation AA proposed by the Board would have required banks to provide customers with the right to opt out of overdraft coverage. Regulation AA implements section 5(a) of the Federal Trade Commission Act to prohibit unfair or deceptive practices.

⁷ This report is available online at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a6.pdf>.

SECTION II: RESEARCH METHODOLOGY

After the public comment period ended, Board staff and ICF Macro made revisions to the proposed overdraft notices that had been published in January 2009. ICF Macro then began conducting one-on-one in-depth cognitive interviews with consumers. The goal of these interviews was to assess the extent to which these disclosures were effective in communicating information to consumers about how their overdrafts would be handled by their bank, what fees they could potentially be charged, and what choices they had related to overdrafts.

Interview participants were recruited by telephone using a structured screening instrument developed collaboratively by ICF Macro and Board staff. Participation was limited to people who were the primary financial decision-maker in their households, and who had a checking account. Respondents who worked for a bank or credit union were excluded from participation. Other screening questions ensured the recruitment of participants with a range of ethnicities, ages, and education levels. The recruiting screener used for both rounds of interviews is provided as Appendix A; Appendix B provides detailed information about the characteristics of participants in all four rounds.

Interviews were approximately 60 minutes long, and were based on an interview guide developed collaboratively by ICF Macro and Board staff. While the guide was updated for each round, the basic structure of the interviews remained consistent. Participants were first asked a series of questions about their check and debit card use. They were then shown a notice on overdraft services for a fictional bank called Solar Bank and asked to review it just as they would if they were opening a checking account. They were asked to “think aloud” while they read the document, and to let the interviewer know if they had any questions or saw anything that they found particularly confusing, surprising, or interesting.

Once participants completed their initial review of the document, they were asked two types of follow-up questions:

- Comprehension questions, to test their understanding of the disclosure content (such as, “If you opened this account and then tried to make a debit card purchase in a grocery store for more money than you had in your account, what would happen?”)
- Attitudinal and preference questions, to collect information about how consumers felt about how their overdrafts would be handled and what choices they would make (such as, “Given what you have read here, would you opt out of overdraft coverage?”)

In some rounds, participants were shown a second notice and asked similar questions. When more than one notice was used, the order in which participants were shown the documents was varied between interviews to control for possible learning effects.

SECTION III: FINDINGS FROM CONSUMER RESEARCH

ROUND 1: INTERVIEWS IN TAMPA, FL (MAY 11 AND 12, 2009)

ICF Macro's first round of cognitive interviews with consumers was conducted on May 11 and 12 in Tampa, Florida.⁸ A total of nine interviews were conducted over the two days of testing.

Disclosure Notices Tested

Each interview participant in this round was shown two different notices that described two different overdraft coverage programs. The first notice indicated to consumers that the bank would cover overdrafts for all types of transactions, but that if they wished they could opt out of coverage for ATM and one-time debit card transactions.⁹ The second notice indicated that the bank would not cover overdrafts for ATM and one-time debit card transactions, but would cover overdrafts for other types of transactions; however, it provided that customers could opt into coverage for ATM and one-time debit card transactions if they wished. These two notices are referred to in this report as the "opt-out" and "opt-in" notices, respectively. The goal of showing both was to both assess consumers' reaction to the two approaches, and to evaluate whether one approach might be easier for consumers to understand.

In its January 2009 proposed regulations, the Board had published both "opt-out" and "opt-in" model notices. However, the notices used in this round of testing differed from those that were published in several ways, including the following:

- The notices that were published in January 2009 stated in the first section that "[overdraft] coverage differs from other overdraft services we offer, such as linking your account to another account with us or an overdraft line of credit." In the notices tested in Round 1, this information was removed from the first section. The information was retained in a section titled "Other Ways We Can Cover Your Overdrafts."
- A section was added to the notice informing consumers that even if they do not have overdraft coverage on ATM and one-time debit card transactions, those transactions could still lead to overdrafts. This statement was added to address concerns from industry commenters that participants might not be aware of this fact and that it might impact their decisions regarding coverage.

⁸ As described in the Introduction, this set of interviews was actually the third round conducted by ICF Macro for the Board on the topic of overdrafts. However, because this phase of research was distinct from that carried out by ICF Macro in 2008, the Tampa interview will be referred to as "Round 1."

⁹ The phrase "one-time debit card transactions" was used in the notice to refer to transactions made using a debit card that did not automatically recur. Different labels were used for these transactions in subsequent rounds.

- On the opt-in notice, a statement was added that “if you do not have enough money in your account for an ATM withdrawal or one-time debit card transaction, we will usually decline the transaction.” This text was added to clarify for consumers what would happen if they did not request overdraft coverage on these transactions.

The notices that participants were shown were revised slightly from the first day to the second day.¹⁰ Notices from the first day were labeled Versions O1 (opt-out) and I1 (opt-in); notices from the second day were Versions O2 and I2. These disclosure notices are provided in Appendix C.

Key Interview Findings

Previous Overdraft Experience

- Six of the nine participants indicated that they had overdrawn their account in the past and had been charged a fee to have the transaction paid.¹¹ Of these six, two said that rather than paying the fee they would have preferred to have the transaction denied, because having it paid was not worth the fee they were charged. The remaining four said that they were glad the transaction had been paid. Of these four, two indicated that they would have wanted the transaction paid because it was a large, important purchase (such as a child’s tuition). One wanted it paid because she values “her credit standing.” The remaining participant said that she would be willing to “bite the bullet” and pay the fee to have her overdraft paid.

Understanding of Overdraft Coverage

- Regardless of which notice was shown, almost all participants understood that under the bank’s overdraft coverage program at least some of their overdrafts would be paid, and that as a result the bank would charge them a fee. However, at least two incorrectly thought that the overdraft coverage being described by the notice was the same as a link to another account.
- All but one of the participants understood that if the bank did not pay an overdraft, their transaction would be declined and they would have to provide another form of payment. Most read this information on the notice, but others answered correctly based on their previous understanding of how overdraft coverage works.
- All but one of the participants understood after reading the first notice they were shown that if they had overdraft coverage, the bank would have discretion in deciding whether

¹⁰ If specific variations between forms are not mentioned in this report, it is because they had no observable impact on participants’ understanding.

¹¹ Whether or not a person had previously overdrawn their account was used as a screening criterion for recruitment in all four rounds, so no assumption should be made that participants are representative of the general population in this regard.

or not to pay overdrafts. Most thought that the bank's decision whether or not to pay overdrafts would depend on the size of the transaction, or the frequency with which a consumer overdrew their account.

- Several participants commented that they would want more information about how the bank would decide whether or not to cover transactions.
- After reading the first notice they were shown, six of the nine participants understood that even if they did not have overdraft coverage, there were some instances in which the bank might still pay overdrafts and charge them a fee. However, some of these participants assumed that these instances would be limited to overdrafts through check transactions. It was unclear to what extent they understood that even if they did not have overdraft coverage, they might still overdraw their account through an ATM or one-time debit card transaction.
- Only three of nine participants understood the term "one-time debit card transaction" to mean a non-recurring transaction made with a debit card. Others had a variety of misinterpretations of this phrase, such as that the consumer would only be allowed to overdraft one time, or that the only transactions to be covered would be those made with a debit card that could be used only once. It was unclear whether participants' lack of understanding of this phrase had an impact on their overall comprehension of overdraft coverage; most seemed to overlook the word "one-time" and notice it only when specifically asked about it.
- Participants who did not understand the phrase "one-time debit card transaction" were asked if the term "non-recurring debit card transaction" was clearer to them. All indicated that it was not.

Understanding of Opt-Out Notice

- Only two of the five participants on the first day understood after reading the opt-out notice that they were automatically enrolled in overdraft coverage. The remaining three believed that unless they contacted the bank, they would not be enrolled in the coverage. In some cases, this misconception appeared to be due to the presence of a tear-off form at the bottom of the page; some participants seemed to assume that if they did not fill out the form the coverage would not apply to them.
- Because of this misconception on the first day, the opt-out notice used on the second day of testing was revised so that the first sentence read, "Unless you tell us otherwise, we will provide overdraft coverage for your account." Participants who saw this version were more likely to understand that they were automatically enrolled in overdraft coverage, although even then one of the four participants did not realize she would have coverage on her account if she did nothing.
- Even among those participants who understood that they were enrolled in coverage and had the right to opt out, only about half understood that their right to opt out was limited

to ATM and individual debit card transactions. The other half incorrectly believed that if they opted out, they would not have coverage on any types of transactions.

- On the first day, only one of five participants understood that recurring debit transactions would be covered whether or not the participant opted out of overdraft coverage on ATM and one-time debit card transactions. This appeared to be at least in part because the forms used on the first day did not refer specifically to recurring debits, but instead described them as “other transactions.” The forms used on the second day of testing included a specific reference to “recurring debit transactions.” Two of the four participants on the second day noticed this reference and understood that overdrafts of this type would generally be covered regardless of whether or not there was overdraft coverage on the account. However, the other two were still confused on this point.

Timing of Opt-Out Notice

- All but one participant felt that the opt-out notice should be provided to consumers multiple times, rather than just once when the account was opened. Three suggested that the bank should provide the notice to customers after the first time they overdraw their account, to remind them that they had the right to opt out of this coverage. Two thought that the notice should be provided to customers every time they overdraw their account, while two more thought it should be provided monthly regardless of whether overdrafts occurred. One participant suggested that it be provided if an account holder was charged “a lot of fees.”

Understanding of Opt-In Notice

- Only three of nine participants understood after reading the opt-in notice that if they did nothing, they would still have overdraft coverage on checks. The other six assumed that if they did nothing they would have no overdraft coverage on any transactions.
- All nine participants understood that they had the option to enroll in overdraft coverage. However, as noted above most thought that this option applied equally to all transactions—that is, that their choice was either to have overdraft coverage on all types of transactions or none.
- After these misconceptions were observed on the first day, the following text was added to the forms used on the second day of testing: “Whether or not you request overdraft coverage for ATM withdrawals and one-time debit card transactions, we will still pay overdrafts for other types of transactions, including checks and recurring debits.” However, the addition of this text did not have a noticeable effect on participants’ understanding.

Participants’ Attitude toward Overdraft Coverage

- Three of the nine participants indicated that they would want to have overdraft coverage on ATM and one-time debit card transactions. Of the other six, one said that he would

want the coverage if there were no daily fees for overdrawn accounts. Another indicated that he would want the coverage when he was shown the opt-in notice. However, when shown the opt-out notice he disliked the fact that the bank had signed him up automatically, and as a result he subsequently indicated that he would not want the coverage.

- When asked whether they would want to opt out of overdraft coverage for all types of transactions including checks, only two participants indicated that they would. The remainder indicated that they would want to keep coverage at least on check transactions; several commented that the transactions that they pay by check tend to be larger and more important to them. Of the two that indicated that they would want to fully opt out of coverage, one said that if there was no daily fee for overdrawn accounts he would opt to keep the coverage.
- Five of the nine participants indicated that if they wanted to opt in or out of coverage, they would prefer to do so online. Two said that they would complete the tear-off form on the bottom of the notice and take it to the bank in person, while one each said that they would prefer to mail the form in or use the phone.

Preference for Opt-Out vs. Opt-In

- All but one participant indicated that they would prefer that the bank give them the opportunity to opt into overdraft coverage, rather than enrolling them automatically and giving them the opportunity to opt out. One admitted that he would not have paid attention to the opt-out notice when opening his account, and therefore would have ended up with coverage that he did not want.

Understanding of “Other Ways to Cover Overdrafts”

- All but one participant were able to easily find information on the forms about other potential ways they could have their overdrafts covered. Almost all understood this section of the notice, although two confused the link to another account and the “overdraft coverage” described on the notice.
- All but one participant indicated they would ask the bank for more information about these alternative methods for covering overdrafts. Several indicated they would be more interested in the link to another account than the line of credit. In some cases this was because participants did not fully understand what a “line of credit” was; other participants seemed wary of getting involved in any bank product related to “credit.”
- Only two participants assumed that everyone would qualify for both of the alternative types of overdraft coverage described. Most others said that all consumers would likely qualify for a link to another account, while their ability to get a line of credit would depend on factors such as their creditworthiness.

- When asked whether more information should be provided on the notice about other ways to cover overdrafts, two mentioned information about the fees associated with these alternatives. One commented that the entire notice should be restructured so that all three alternatives (i.e., overdraft coverage, a link to another account, and a line of credit) are described equally. Another participant felt that the line of credit should be the “default” option, rather than the overdraft coverage described on the notice.

ROUND 2: INTERVIEWS IN DENVER, CO (JUNE 8 AND 9, 2009)

ICF Macro conducted a second round of nine cognitive interviews in Denver, CO on June 8 and 9, 2009. One of the primary goals of this round was to address the biggest misconceptions of participants in the earlier rounds—that is, a) their lack of understanding that overdrafts by check would be covered regardless of their decision whether or not to have coverage on ATM and one-time debit card transactions; and b) their mistaken belief after reading the opt-out notice that they would have to actively sign up for overdraft coverage, when in fact it was provided automatically with their account.

Disclosure Notices Tested

Participants in this round were again shown both an “opt-out” and “opt-in” notice. However, the notices used in Round 2 were significantly different than earlier versions in that they were written in a question-and-answer format, rather than the narrative format used previously. This format was used in an effort to make the notice more consumer-friendly, and to make it easier for consumers to find and understand information.

In addition to this general change in format, other revisions that were made to the notices between Rounds 1 and 2 included the following:

- The opt-in forms used in Round 2 specifically stated that the bank would “provide overdraft coverage on your account for checks, automatic bill payments, and some other types of transactions.” This statement was intended to alleviate the misconception held by most participants in Round 1 that if they did not actively opt into coverage, the bank would not cover any types of overdrafts.
- The opt-in notices used in Round 1 included a statement indicating that if the customer did not have overdraft coverage for a particular transaction type, the transaction would be declined and they would have to provide another form of payment. Because several participants in that round indicated that this was obvious to them and did not need to be stated, this text was removed from the notices used in Round 2.
- Because some participants in Round 1 mistakenly believed that overdraft coverage was the same product as overdraft protection plans like a link to a savings account, the revised notices included a note in the first section indicating that overdraft coverage differs from other overdraft services that the bank might offer.¹²
- In several cases, participants’ attitudes toward overdraft coverage in Round 1 were determined almost exclusively by the presence of a daily fee. The concern was that this

¹² This statement was present in the notices that were published for comment in January 2009. They had been removed from the versions used in Round 1 in an effort to save space, but because participants were confused, the text was added back in for Round 2.

fee might have distracted them from other information on the notice. Therefore, the reference to the daily overdraft fee was removed from the notices for Round 2.

- The notices used in Round 2 substituted the phrase “automatic bill payments” for “recurring debits,” to see whether consumers might be more familiar with this term.
- Because most Round 1 participants did not understand the phrase “one-time debit card transactions,” the revised notices instead used the phrase “individual debit card transactions.”
- The titles of the opt-out and opt-in notices in Round 1 were “Explanation of Overdraft Coverage” and “Requesting Overdraft Coverage,” respectively. For Round 2, these titles were both changed to “Your Choices Regarding Overdraft Coverage” to better reflect the fact that the disclosure was intended to make consumers aware of their options related to how their overdrafts would be handled by the bank.

As in Round 1, over the two days of testing participants were shown several versions of the notices that were slightly different. The versions used on the first day were labeled O3 (opt-out) and I3 (opt-in). On the second day participants were shown Version O4 and two different opt-in notices, I4 and I5. These disclosure notices are provided in Appendix D.

Key Interview Findings

Previous Overdraft Experience

- Seven of the nine participants indicated that at some point in the past they had spent more money than they had in their account. All indicated that the transaction had been allowed by the bank, and that they had subsequently been charged a fee. One participant described a recent incident in which he had bought a \$2 bag of ice at a convenience store that overdrawn his account. He said that he had been charged two overdraft fees in this case (for a total of about \$60), because the cashier had accidentally recorded the purchase twice.
- The participants that had previously overdrawn their accounts were evenly split as to whether they would have wanted these transactions paid or denied. Three said that they would have preferred to have the transaction denied, because this inconvenience would have been preferable to being charged fees. Three others said that because their transaction was important to them, they were willing to pay the overdraft fee to have it go through. The seventh participant had overdrawn his account multiple times, and indicated that whether he would have wanted the overdraft paid would have depended on the specific transaction in question.

General Understanding of Overdraft Coverage

- Regardless of which notice they were shown, almost all participants understood that “overdraft coverage” meant that at least some of their overdrafts would be paid by the

bank, and that as a result they would be charged a fee. However, at least three had difficulty distinguishing between the “overdraft coverage” described on the notice and a link to another account—despite the fact that the notice specifically indicated that these two types of overdraft services were different. In most cases, this seemed to be because participants associated the phrase “overdraft coverage” with links between accounts based on personal experience.

- All but one participant understood that if they did not have overdraft coverage their transactions could be denied; as one participant described it, she would be “left there in the aisle.” The remaining participant said that he did not know what would happen if he did not have overdraft coverage, since the notice did not provide this information.
- All but one participant understood that if they had overdraft coverage, their bank would have discretion in deciding whether or not to pay overdrafts. Seven of the eight participants who understood this fact saw this information in the notices, while the eighth simply assumed that the bank would have the discretion to refuse very large overdrafts. Most thought that the bank’s decision whether or not to pay overdrafts would depend on the size of the transaction, the length of the account-holder’s relationship with the bank, or the frequency with which a consumer overdraw their account.
- Six of the nine participants understood that even if they did not have the overdraft coverage described in the notice, they might still overdraw their account through an ATM or debit card transaction. However, only three of the six saw this information on the notice. One assumed that banks would always allow overdrafts to occur so that they could collect a fee. Another said that he thought banks would probably allow an overdraft “if it was a small amount.”
- Only three of nine participants understood that the phrase “individual debit card transaction” referred to a single non-recurring transaction made with a debit card. Most incorrectly assumed that this phrase referred to any transaction made with a debit card, including recurring debits. One thought that this phrase meant that they could opt in or out of overdraft coverage on a transaction-specific basis.

Understanding of Opt-Out Notice

- Eight of the nine participants understood after reading the opt-out notice that they were automatically enrolled in overdraft coverage.
- All participants understood that they had the right to opt out of coverage on ATM and individual debit card transactions. However, only two of the nine understood that even if they opted out, they would still have coverage on checks and automatic bill payments. As in Round 1, most participants mistakenly thought that if they opted out they would have no overdraft coverage at all.

- Three participants did not believe that the bank would allow them to withdraw more money out of an ATM than they had in their account, even if they had overdraft coverage.
- Two participants misunderstood the purpose of the tear-off section at the bottom of the opt-out notice. One said he would fill out the form if he wanted to set up a line of credit or link to another account. Another thought filling out the form would indicate to the bank that she wanted to sign up for overdraft coverage, when in fact the form would actually signal that she wanted to opt out of this coverage.
- Whether or not they were able to correctly indicate whether check transactions would be covered, participants generally understood that automatic bill payments would be treated in the same way as checks. This was equally true whether participants were looking at the opt-out or opt-in forms.

Timing of Opt-Out Notice

- When asked whether accountholders should receive information about their right to opt out of overdraft coverage more than once, six said that they should. One participant stated that it was sufficient for banks to provide this information once at account-opening; two others did not express a clear opinion.
- Opinions of how often this information should be provided to accountholders varied from monthly to annually. One person commented that accountholders should be reminded of their right to opt out each time they are charged an overdraft fee.

Understanding of Opt-In Notice

- Only four of nine participants understood that overdraft coverage was automatically provided for checks, automatic bill payments, and some other types of transactions; the remainder thought that if they did nothing they would have no coverage on their account.
- Only four of the nine participants understood that they could add overdraft coverage for ATM withdrawals and debit card transactions if they wished. Others did not see this information on the notice.
- In an effort to address these significant points of confusion, two alternative wordings (Versions I4 and I5) were tested on the second day. Both versions indicated that overdraft coverage would be provided for checks, automatic bill payments and some other types of transactions. Version I4 then stated, “In addition, you can also sign up for overdraft coverage for ATM withdrawals and individual debit card transactions.” Version I5, on the other hand, included the more direct language, “We do not provide overdraft coverage on your account for ATM withdrawals and individual debit card transactions. However, if you want coverage on these transactions, you can sign up for it.” When asked which of these two notices they preferred, four of the five participants

on the second day indicated that they found Version I5 to be clearer and more explicit. One preferred Version I4, because she found the other notice was “too wordy.”

- There was also some empirical evidence that the wording used in Version I5 might be more effective. While neither of the two participants that were shown Version I4 understood that that ATM withdrawals and individual debit card transactions would be treated differently than checks, two of the three who were shown Version I5 understood this point.
- Three participants were confused by the statement that they would have coverage for “checks, automatic bill payments, and *other types of transactions*.”¹³ One commented that they could not think of any other types of transactions that were not addressed elsewhere on the notice. Two participants who were looking at the opt-in notice incorrectly assumed that ATM and individual debit card transactions could sometimes fall into the category of “other types of transactions.”

Participants’ Attitude toward Overdraft Coverage

- Five of the nine participants indicated that if they were opening a checking account, they would want overdraft coverage on ATM and debit card transactions. However, it was not clear that these participants specifically wanted the “overdraft coverage” described on the notice; most indicated that they would prefer a link to another account if it was less expensive. Two participants indicated that they would not want any overdraft coverage on ATM and debit card transactions, while the remaining two were unsure.
- Two of the nine participants indicated that if they could, they would want to opt out of overdraft coverage for all transactions, including checks and recurring debits. One of the two described his philosophy toward overdrafts as simply, “don’t let me charge if I don’t have the money.”
- Five of the nine participants indicated that if they wanted to sign up for or opt out of coverage, they would prefer to do so by phone. The remaining four indicated that they would do so online. None said that they would use the tear-off form provided at the bottom of the page.

Preference for Opt-Out vs. Opt-In

- Six of the nine participants indicated that they would prefer that the bank give them the opportunity to opt into overdraft coverage, rather than enrolling them automatically and giving them the opportunity to opt out. One compared the “opt-out” alternative to incidents when she had found herself subscribed for magazines because she had not realized she had to check a box to refuse them. The remaining three participants

¹³ In this case, the “other types” of transactions being referenced are other transactions made using a checking account number, such as online bill payments.

preferred that the bank enroll them automatically, primarily because they knew that they would want the coverage. One of the three commented that it was “safer” to be enrolled automatically.

Understanding of “Other Overdraft Services”

- All participants saw the information on the notice about other overdraft services. As noted above, however, three participants confused the link to another account with the “overdraft coverage” described on the notice.
- All participants indicated they would ask the bank for more information about these alternative overdraft services. Most said that they would be more interested in the link to another account than the line of credit; in fact, at least two already had a link between accounts at their own banks.
- Only two participants assumed that everyone would qualify for both of the alternative types of overdraft coverage described. The remaining seven said that whether accountholders could get a line of credit would depend on their creditworthiness. Three also said that accountholders would have to qualify to get a link to another account, while others assumed that all accountholders would be eligible for this overdraft service.
- When asked whether more information should be provided on the notice about alternative overdraft services, two said that they would want information about the fees associated with these alternatives. Another said that the notice should explain how “overdraft coverage” differs from these other services.

ROUND 3: INTERVIEWS IN BETHESDA, MD (AUGUST 17 AND 18, 2009)

ICF Macro conducted a third round of nine cognitive interviews in Bethesda, Maryland on August 17 and 18, 2009. One of the primary goals of this round was to develop a notice that would address a continuing point of confusion for participants—that regardless of whether they chose to have overdraft coverage on ATM and one-time debit card transactions, the bank would still cover transactions for other types of transactions, including checks.

Beginning in Round 3, the opt-out notice was no longer used in the interviews; participants were shown only an opt-in notice, reflecting a decision to focus testing efforts solely on the opt-in notice.

Disclosure Notices Tested

As in prior rounds, different versions of the notice were used: Version I6 on the first day of testing, and Version I7 on the second day (provided in Appendix E). These notices differed from those used in Round 2 in a number of ways, including the following:

- Information about fees was moved lower in the notice, while information about how different types of transactions would be treated was moved higher. This change was made because most participants in earlier rounds of testing had clearly understood the fees, while many had misunderstood the treatment of different types of overdrafts.
- Information about how different types of overdrafts would be treated by the bank was provided in a table, rather than in narrative form. The intent of this change was to make this information more prominent.
- A section was added to the notice titled, “What happens if I don’t have overdraft coverage for a transaction?” The first sentence of this section stated that if the consumer did not have overdraft coverage, in most cases their transaction would be declined or returned. The next three sentences explained that consumers could still overdraw their account if they did not have overdraft coverage.
- The notices used in Round 2 had distinguished overdraft coverage from “other overdraft services” that the bank offered. The versions used in Round 3 referred to these other services as “overdraft protection plans.” The intent of the new wording was to further distinguish these plans from the overdraft coverage described in the notice.
- On the first day of testing, the first section of the notice included a reference to overdraft protection plans, and then provided more information about these plans in a later section. On the second day, all information about overdraft protection plans was moved to the first section in order to make more efficient use of space.

- Because some participants in Round 2 had been confused by the statement that the bank provides coverage on checks, automatic bill payments, and “other types of transactions,” the notices used in Round 3 substituted the phrase “transactions using your checking account number” for “other types of transactions.”
- The title of the notice was changed from “Your Choices Regarding Overdraft Coverage” to “What You Need to Know About Overdrafts and Overdraft Fees,” to assess whether this heading would improve the likelihood that consumers would read the disclosure.
- The daily overdraft fee was added back into notices for this round, under the label “sustained overdraft fee.”
- Because of the increased space needed for the two tables and other information that was added, the notices that were tested in Round 3 were printed on legal-sized paper. Notices for all other rounds were printed on letter-size paper.

Key Interview Findings

Previous Overdraft Experience

- All nine participants indicated that at some point in the past they had spent more money than they had in their account, and that the transaction had been allowed by their bank. Six indicated that they had subsequently been charged a fee. The remaining three participants indicated that they were not charged for overdrafts because they had overdraft protection on their checking accounts in the form of a link to a savings account or a line of credit.
- The six participants that had been charged a fee for overdrawing their account were evenly split as to whether they would have wanted these transactions paid or denied. Three said that they would have preferred to have the transaction denied so that they would not have been charged fees. The other three, however, preferred to pay the fee and have the transaction paid. One of these participants indicated that this was because he didn’t want “bad credit,” while another said that he didn’t mind being charged fees because he trusts his bank. The third noted that the bank had reversed her fee when she called to ask about it.

General Understanding of Overdraft Coverage

- Most participants understood that if they had overdraft coverage for a particular transaction and tried to spend more money than they had in their account, the bank would pay the amount. As in previous rounds, however, a few participants (in this case, two of the nine) had difficulty distinguishing between the “overdraft coverage” described on the notice and “overdraft protection plans” offered by the bank. This confusion existed despite the fact that the notices being tested specifically stated that these two sets of practices were different.

- Four of the nine participants initially had the misconception that if they had overdraft coverage they would not be charged a fee for overdrafts. In three cases this seemed to be because of the use of the phrase “overdraft coverage”—one participant commented that if their transactions were “covered,” they would assume that they would not be charged a fee. In two of these cases this misconception was so strong that even after the interviewer explained otherwise, both still assumed that they would not be charged any fees.
- Six of the nine participants understood that if they did not have overdraft coverage, their transactions would be denied. The remaining three incorrectly thought that their transactions would be paid, but because they did not have coverage they would be charged a fee. This misconception was related to the incorrect belief that “overdraft coverage” meant that they would not be charged fees for overdrawing their account.
- Six participants were asked whether they thought the bank’s overdraft coverage program meant that it would pay all overdrafts. Three correctly stated that overdraft coverage was discretionary, although one of the three did not see this information in the notice and based her answer only on prior experience. Two incorrectly thought that the bank would pay all overdrafts, while the remaining participant did not know. As in previous rounds, those participants that understood that the bank had discretion thought that the bank’s decision whether or not to pay overdrafts would depend on the size of the transaction or the customer’s history with the bank.
- Six of eight participants¹⁴ understood that even if they did not have the overdraft coverage described on the notice, it was still possible that they would overdraw their account through an ATM or debit card transaction. Five of the six saw this information on the notice, while the sixth just assumed this was the case. The remaining two participants incorrectly thought that if they did not have overdraft coverage for ATM or individual debit card transactions, there was no way they could overdraw their account.
- Only five of eight participants who were asked understood the meaning of the phrase “one-time debit card transactions.” The remaining three participants misinterpreted this phrase; two thought it referred to debit cards that could only be used once, while the third thought it meant that the customer was only allowed to overdraw his or her account once with each debit card. One of the participants that did understand the phrase suggested that “everyday debit card transactions” would be a clearer way to describe these transactions. Two subsequent participants that were asked whether they preferred the term “one-time” or “everyday” indicated that they felt the latter term was clearer.
- Six participants were asked what would happen if they did not have overdraft coverage on checks and wrote a check to their gas company for more money than was in their

¹⁴ One of the nine participants in this round of testing had very low comprehension of overdraft coverage in general, even after reading this notice several times. As a result, this participant was not asked a number of the follow-up questions.

account. Five correctly answered that they would likely be charged a fee by both their bank (for bouncing their check) and the gas company. The remaining participant indicated thought he would be charged a fee by the gas company, but not by his bank.

Understanding of Right to Opt In

- All nine participants at least initially had the misconception that if they did not actively sign up for overdraft coverage, the bank would not cover any types of transactions. This confusion seemed to be for a variety of reasons. First, at least two participants were distracted by the presence of the tear-off form at the bottom of the page, and seemed to think that if the form was not returned there would be no overdraft coverage on the account. Some participants simply overlooked the table showing which transactions were covered. For example, one participant stated that there was no place on the notice that mentioned how different transaction types would be handled, even though this was the stated purpose of the table. Other participants saw and understood the table, but incorrectly thought that the table showed what types of transactions would be covered if they requested overdraft coverage. While about half understood after re-reading the notice more carefully that coverage on certain transactions would be provided automatically, others remained confused on this point.
- A few participants were distracted by a paragraph on the notice describing instances in which a customer could still overdraw their account even if they did not have overdraft coverage. When asked to explain how the bank would handle overdrafts, they referred exclusively to this section of the notice—even though the intent of this paragraph was to describe less-common instances when an overdraft could occur.
- All but two of the participants understood that they had the option of signing up for overdraft coverage on ATM and debit card transactions. As noted above, however, all participants also incorrectly thought that they also had to sign up for coverage on other transactions as well.
- After the fact that the bank automatically provides overdraft coverage on some transactions was explained to them, several participants suggested that the notice state that this coverage “comes standard” on their account. This terminology, they felt, would be best understood by consumers.
- All nine participants assumed that if they signed up for overdraft coverage on ATM and debit card transactions, the bank would later allow them to remove the coverage from their account if they wished. As one put it, “I assume that if I sign up, I could get out of it.”

Participants’ Attitude toward Overdraft Coverage

- Of eight participants that were asked, four initially indicated that they would want overdraft coverage on ATM and debit card transactions, while the other four said that

they would not want coverage on these transactions. Of the latter four, two later indicated that they might opt into the coverage, just in case of emergencies.

- Only one participant indicated that she would want to opt out of overdraft coverage for all transaction types if given the chance. However, this participant also indicated that she would opt into coverage on ATM and debit card transactions, so her responses were contradictory. All other participants indicated that they would want coverage at least on checks and automatic bill payments.
- When asked how they would contact their bank to sign up for overdraft coverage on ATM and debit card transactions, participants were split evenly. Four indicated that they would call the phone number shown on the notice, four indicated that they would go to the website provided, and one was unsure which of the two methods she would use. None said that they would use the tear-off form provided at the bottom of the notice.

Preference for Opt-Out vs. Opt-In

- Of the eight participants that were asked, seven said they would prefer that the bank give them the opportunity to opt into overdraft coverage, rather than enrolling them automatically and giving them the opportunity to opt out. One commented that the latter scenario would make him feel like the coverage had been “forced” on him, while another said that he generally did not like to be automatically enrolled in anything. Another participant said that she would find it “easier to agree to getting something, rather than to asking to remove it.”
- The one participant who preferred that he be automatically enrolled in coverage rather than given the opportunity to opt in did not understand what “overdraft coverage” was; he incorrectly believed that if he had this coverage he would not be charged any fees for overdrawing his account.

Overdraft Protection Plans as an Alternative to Overdraft Coverage

- Six participants generally understood the information provided on the notice about “overdraft protection plans.” The other three indicated that they did not understand the notice’s reference to plans that “link your account with a savings account, a credit card account, or a line of credit.”
- All participants indicated they would ask the bank for more information about overdraft protection plans. When asked why, all but two mentioned the language in the notice indicating that these plans “may be less expensive” than overdraft coverage.
- Of seven participants that were asked, two thought that all customers would qualify for the overdraft protection plans described in the notice. The remaining five indicated that only some people would qualify based on their credit history.

- When asked whether more information about overdraft protection plans should be provided on the notice, two participants commented that they would have liked to see more description of the plans and how they differed from overdraft coverage. Other participants said that no additional information was needed on this notice.

ROUND 4: INTERVIEWS IN PHILADELPHIA, PA (SEPTEMBER 14 AND 15, 2009)

ICF Macro conducted a final round of 11 cognitive interviews in Philadelphia, Pennsylvania on September 14 and 15. In revising the notices for this round, ICF Macro attempted to address two important misconceptions that were apparent from Round 3: a) that “overdraft coverage” meant that consumers would not be charged fees if they overdrawed their account; and b) that if consumers did not opt into coverage, overdrafts by check or automatic bill payment would not be authorized.

Disclosure Notices Tested

As in Round 3, participants in Round 4 were shown only an opt-in notice. This notice differed from that used in the previous round in two significant ways. First, the phrase “overdraft coverage” was removed entirely. Both Board staff and ICF Macro were concerned that the use of this phrase seemed to imply to some participants in Round 3 that they would not be charged a fee for overdrawing their accounts. Therefore, rather than indicating that the bank provided “overdraft coverage” to customers and then describing the meaning of that term, the revised notices described how overdrafts would be handled and referred to these as the bank’s “standard overdraft practices.” As in the previous round, the notice then distinguished these “standard overdraft practices” from “overdraft protection plans” like a link to a savings account.

In addition to the elimination of the phrase “overdraft coverage,” the notice was shortened considerably. Board staff was concerned that the length of the notices used in Round 3 made it less likely that consumers would read them, and asked ICF Macro to find ways to make more efficient use of the space. For this reason, several elements were removed from the notice:

- The two tables that had been added to the notice in Round 3 were removed. Fees were disclosed in a narrative format (as they had been in Rounds 1 and 2), and information about whether different types of transactions would be paid by the bank was provided in bulleted form.
- The tear-off form at the bottom of the notice was removed, because very few participants in the first three rounds indicated that they would be likely to use this form to communicate with their bank.
- The statement that overdrafts could still occur even if the bank did not authorize them (for example, because of delays in charges posting to the account) was removed from the notice because it appeared in Round 3 to distract participants from the general opt-in concept. Instead, the notice used in Round 4 stated simply, “if we do not authorize and pay an overdraft, your transaction will be declined.”

Unlike in previous rounds, the same notice (Version I8) was used on both days of testing. This notice is provided in Appendix F.

Key Interview Findings

Previous Overdraft Experience

- Eight of the 11 participants indicated that at some point in the past they had spent more money than they had in their account, and that the transaction had been allowed by their bank. All eight indicated that they had subsequently been charged a fee.
- As in previous rounds, participants that had been charged a fee for overdrawing their account were evenly split as to whether they would have wanted these transactions paid if they had been given the choice. Four said that they would have preferred that the transactions be declined so that they would not have been charged fees. The other four were glad that the bank had paid the transactions, even if they were subsequently charged a fee. One noted that if the bank had allowed his check to be returned unpaid he would have had to pay two fees, one to the bank (for a returned check) and another to the company he was trying to pay. Another said that he would want overdrafts paid because he wouldn't want to be "kicked out of the bank" for bouncing a check.

Understanding of Standard Overdraft Practices

- In this round of testing, immediately after reviewing the notice participants were asked to explain what the word "overdraft" meant. All were able to do so easily—and while the notice provided a definition of the word in its first sentence, it appeared that almost all participants were already familiar with the term before reading the notice.
- After reading the notice, six participants immediately understood that the bank would pay overdrafts for checks and other transactions using their checking account number, and for automatic bill payments. Two other participants realized this after re-reading the notice. The remaining three participants did not understand that overdrafts for these transactions would be paid until this fact was explained to them by the interviewer. This represented a substantial improvement from previous rounds—in the previous round, for example, none of the nine participants realized that check overdrafts would be paid.
- In at least three cases, the reason that participants initially had difficulty understanding that check overdrafts would be paid was because they focused exclusively on the statement explaining what types of transactions would not be paid, while overlooking the list of types that would be paid. One of the three commented that this was because the word "not" was underlined, which made that sentence more prominent.
- Seven of the 11 participants clearly understood from the notice that overdrafts through an ATM or debit card transaction would not be paid by the bank unless specifically requested. An additional three participants correctly indicated that these overdrafts would not be paid, but appeared to base their answers on prior assumptions rather than a close reading of the notice. Again, this was a substantial improvement in comprehension from previous rounds.

- All but one participant understood that if the bank paid an overdraft, it would charge a fee of up to \$30. The remaining participant incorrectly thought that the phrase “we will authorize and pay overdrafts” meant that the bank would pay these overdrafts without charging a fee.
- Five of the 11 participants understood that the bank’s coverage of overdrafts was discretionary, and did not guarantee that any overdrafts would be authorized or paid. Of these five, two based their response to this question on the relevant text in the notice, while the remaining three simply assumed that the bank had the right to decline overdrafts if it wished. Of the remaining six participants, four incorrectly thought that the bank would pay all overdrafts, while the other two were unsure.
- As in previous rounds participants were asked whether they could overdraw their account through an everyday debit card transaction, even though the bank generally does not pay overdrafts for these transactions. However, because this information was removed from the notice prior to this round, participants’ answers were based only on their prior experience and assumptions. Of seven participants that were asked this question, three correctly stated that it would be possible to overdraw through an everyday debit card transaction even if they did not contact the bank to request that these transactions were paid. The remaining four participants incorrectly thought that this would not be possible.
- Nine of the 11 participants were able to correctly explain what the phrase “everyday debit card transaction” meant in the context of the notice. This was a substantially higher percentage than in previous rounds, when the phrases “one-time debit card transaction” or “individual debit card transaction” were used.
- Nine participants were asked what would happen if they wrote a check to their gas company for more money than was in their account and the bank did not pay the overdraft. All correctly indicated that they probably would be charged a fee by their gas company. Only six, however, understood that they probably would also be charged a returned check fee by their bank. The remaining three indicated that they did not think such a fee would be charged because it was not mentioned in the notice.
- All nine participants who were asked knew that they had the option to tell the bank to pay overdrafts for ATM and everyday debit card transactions, and understood how they could do so. As in the previous round, all participants assumed that if they asked the bank to authorize and pay transactions on ATM and everyday debit card transactions, they could later contact the bank to reverse their decision.

Participants’ Attitude toward Overdraft Coverage

- Of nine participants that were asked, only one initially indicated after reviewing the notice that he would want the bank to pay overdrafts on ATM and debit card transactions—and this participant said he had not overdrawn his account for years and would be unlikely to ever do again. Two other participants said at first that they would not want the bank to pay these transactions, but later indicated that they might want it to

in case of emergencies. The remaining six participants indicated that they would not want the bank to pay overdrafts for ATM and debit card transactions because of the fees that they would be charged.

- Three of nine participants indicated that if they could, they would instruct the bank to never pay any overdrafts for any types of transactions. The remaining six participants indicated that they would want the bank to pay overdrafts at least on checks and automatic bill payments.
- Seven participants indicated that if they wanted to instruct the bank to pay overdrafts on ATM and everyday debit card transactions they would call the bank. The remaining two said that they would go online to let their bank know they wanted these overdrafts to be paid.

Preference for Opt-Out vs. Opt-In

- Of the nine participants that were asked, five said they would prefer that the bank give them the opportunity to request that it pay overdrafts on ATM and everyday debit card transactions, rather than providing this coverage automatically and giving them the opportunity to opt out. As in previous rounds, several participants indicated that they did not like to be automatically signed up for programs or services without their prior consent.
- The remaining four participants indicated that they would prefer that the bank pay overdrafts on ATM and everyday debit card transactions as a standard practice. This was a deviation from previous rounds, when a higher percentage of participants preferred the “opt-in” strategy. However, at least two of the four participants this round that preferred the “opt-out” strategy seemed not to fully understand the distinction between these two choices. For example, one said that he preferred the “opt-out” strategy because it offered him more choice over his account, when in fact both strategies provide an equal degree of choice for customers.

Overdraft Protection Plans as an Alternative to Standard Overdraft Practices

- Unlike in previous rounds, participants generally did not confuse the “overdraft protection plans” offered by the bank with its “standard overdraft practices.” Only one participant did not understand that these are two distinct options for how their overdrafts could be handled.
- The notice used in Round 4 used “a link to a savings account” as an example of an overdraft protection plan offered by the bank. Of ten participants that were specifically asked to comment on this section of the notice, seven understood what a “link to a savings account” meant. The other three indicated that they did not know what this meant, but that they would ask their bank.

- All participants indicated they would ask the bank for more information about overdraft protection plans. When asked why, about half mentioned the text that indicated that these plans “may be less expensive” than the bank’s standard overdraft practices.
- When asked whether more information about overdraft protection plans should be provided on the notice, two participants commented that the bank should include information about the cost of these plans rather than simply indicating they “may be less expensive.” One participant said that the bank should provide a brief description of the plans, while another thought the notice should more clearly explain the difference between these plans and the bank’s standard overdraft practices. On the other hand, one participant specifically said that no more information should be provided because it would make the notice “too wordy.”

CHAPTER III: SUMMARY

This report summarizes the second phase of work conducted by ICF Macro in support of the Board's efforts to amend Regulation E rules related to overdraft coverage. The goal of this work was to revise the overdraft notices proposed by the Board in January 2009 to ensure that they communicate information to consumers effectively and clearly.

ICF Macro conducted four rounds of consumer interviews between May and October 2009 in order to test the effectiveness of these disclosure notices. In early rounds of testing, participants had a number of serious misconceptions about how overdrafts would be handled, including that a) if they did nothing they would have no coverage for overdrafts by check; b) overdrafts of all types would be treated the same by the bank; and c) if they had "overdraft coverage" they would not have to pay any overdraft fees. Over the course of the four rounds, ICF Macro and Board staff attempted to combat these misconceptions in a number of ways, with mixed success. However, the disclosure notice shown to participants in the last round of testing was substantially more effective than earlier versions. While this notice did not eliminate all misconceptions, participants who read this version had a much greater understanding of how their overdrafts would be handled and what their options were.

The results of the consumer research described in this report will inform the Board's final revisions to Regulation E (to be issued in November 2009), and the notice that was developed will be included as a model. By relying heavily on consumer testing in the development of this notice, the Board hopes to ensure that its new regulations will lead to disclosures that are easy for consumers to read and understand, and as a result will help them make well-informed financial decisions.

Appendix A: Sample Recruitment Screener

Note: The recruitment screeners used in different rounds varied slightly in terms of the quotas that were established for different criteria, but the questions remained the same in all rounds. The screener provided here was used in Round 1 of testing.



**Participant Screener for Federal Reserve Board Interviews
Tampa, FL
May 12th and 13th, 2009**

General Information and Recruiting Specifications

- Recruit 9 participants for 60-minute interviews
- Recruit two floaters per day, one to cover AM and the other to cover PM
- Participant stipend is \$75
- INTERVIEWERS: Ask all participants to bring their reading glasses if necessary, because they will be asked to read over several credit card documents as part of the interview.

Screening Questions

- Q1. Do you currently have a checking account with a bank?
- No → *Thank respondent politely and end call.*
 - Yes → Continue
- Q2. Are you the person in your household who is responsible for making financial decisions?
- No → *Thank respondent politely and end call.*
 - Yes → Continue
 - Yes, in cooperation with my [spouse, partner, etc.] → Continue
- Q3. Do you currently work for a bank or credit union?
- No → Continue
 - Yes → *Thank respondent politely and end call.*

Screening Question	Screening Criteria:
Q4: Have you ever had an overdraft on your checking account—that is, spent more money than was available in your account? a) Yes b) No c) Don't know	<ul style="list-style-type: none"> • At least 7 recruits must respond “a” to Q4
Q5: How much money do you have currently in your checking account? a) Under \$500 b) \$500 or over	<ul style="list-style-type: none"> • At least 5 recruits must respond “a”

<p>Q6: What is your age?</p> <ul style="list-style-type: none"> a) 18 to 25 b) 26 to 35 c) 36 to 45 d) 45 to 60 e) 61+ 	<ul style="list-style-type: none"> • At least 4 recruits should respond “a” or “b” • At least 4 recruits should respond “c”, “d”, or “e”
<p>Q7: What is your ethnicity?</p> <ul style="list-style-type: none"> a) White b) African-American c) Latino d) Asian e) Other 	<ul style="list-style-type: none"> • At least 3 recruits should respond “b”, “c”, “d”, or “e” to Q7
<p>Q8: What is the highest level that you reached in school?</p> <ul style="list-style-type: none"> a) Attended some high school b) Graduated from high school c) Attended some college d) Graduated from college 	<ul style="list-style-type: none"> • At least 4 recruits should respond “a” or “b”
<p>Q9: Gender</p>	<ul style="list-style-type: none"> • At least 3 recruits of each gender

Appendix B: Information about Participants

	Round 1: Tampa (n=9)	Round 2: Denver (n=9)	Round 3: Bethesda (n=9)	Round 4: Philadelphia (n=11)	Total (n=38)*
Gender					
Male	4	7	4	6	21 (55%)
Female	5	2	5	5	17 (45%)
Age					
18-25	2	1	3	2	8 (21%)
26-35	1	3	1	3	8 (21%)
36-45	2	3	1	4	10 (26%)
46-60	3	1	2	1	7 (18%)
61+	1	1	2	1	5 (13%)
Race/Ethnicity**					
Caucasian	5	3	6	8	22 (58%)
African-American	2	2	3	2	9 (24%)
Hispanic	2	3	0	0	5 (13%)
Asian	0	0	0	1	1 (3%)
Other	1	1	0	0	2 (5%)
Education Level					
Some high school	0	0	1	0	1 (3%)
High school graduate	4	1	2	4	11 (29%)
Some college	2	3	3	3	11 (29%)
College graduate	3	5	3	4	15 (39%)
Current Checking Account Balance					
Under \$500	1	3	5	6	15 (39%)
\$500 or more	8	6	4	5	23 (61%)

*Totals may not add up to 100%, because of rounding.

**One participant in Tampa identified him/herself as both White and African-American.

Appendix C: Disclosure Notices Used in Round 1 of Testing

- Notices Used on First Day of Testing:
 - Version O1
 - Version I1
- Notices Used on Second Day of Testing:
 - Version O2
 - Version I2

EXPLANATION OF OVERDRAFT COVERAGE

Description of Your Coverage

We provide overdraft coverage for your account. This means that if you do not have enough money in your account for an ATM withdrawal or a one-time debit card transaction, we may still authorize the transaction and pay the overdraft. Having overdraft coverage does **not** guarantee that we will authorize your overdrafts in all cases. If we decide to pay an overdraft, we will charge you a fee. See below for more information, including how to opt out if you do not want us to authorize any ATM or one-time debit card overdrafts.

Overdraft Fees

- We will charge you up to \$30 each time we pay an overdraft.
- We will also charge you \$5 for each day your account remains overdrawn.
- There is no limit on the total amount of fees we can charge you for overdrawing your account.

Your Right to Opt Out of Overdraft Coverage

You may opt out of overdraft coverage for ATM withdrawals and one-time debit card transactions by telling us not to authorize these transactions when you do not have enough money in your account. Opting out may allow you to limit the overdraft fees you are charged. However, some overdrafts could still occur even if you opt out. For example, you may have enough money in your account when we authorize a transaction, but other transactions may reduce the amount in your account before that transaction clears. If this causes an overdraft, you will be charged a fee.

Opting out will not affect whether we pay overdrafts for other types of transactions, including checks. If we decide to pay these overdrafts, we will charge you a fee.

Other Ways to Cover Your Overdrafts

We offer other ways of covering your overdrafts that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How to Opt Out or Get More Information

To opt out of overdraft coverage or request information about other ways to cover your overdrafts:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

I do not want overdraft coverage for my ATM withdrawals and one-time debit card transactions.
 I want information about other ways to cover my overdrafts.

Printed Name: _____

Date: _____

Account Number: _____

REQUESTING OVERDRAFT COVERAGE

Your Right to Request Overdraft Coverage

If you do not have enough money in your account for an ATM withdrawal or one-time debit card transaction, we will usually decline the transaction. In these cases, you may be unable to complete the transaction unless you have another form of payment. **If you want us to authorize and pay these overdrafts, you can request overdraft coverage.** Having overdraft coverage does **not** guarantee that we will authorize your overdrafts in all cases. If we decide to authorize and pay an overdraft, we will charge you a fee.

Even if you do not request overdraft coverage for ATM withdrawals and one-time debit card transactions, overdrafts could still occur in some cases. For example, you may have enough money in your account when we authorize a transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account and you will be charged a fee.

Your choice will not affect whether we pay overdrafts for other types of transactions, including checks. If we decide to pay these overdrafts, we will charge you a fee.

Overdraft Fees

- We will charge you up to \$30 each time we pay an overdraft.
- We will also charge you \$5 for each day your account remains overdrawn.
- There is no limit on the total amount of fees we can charge you for overdrawing your account.

Other Ways to Cover Your Overdrafts

We offer other ways of covering your overdrafts that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How to Request Overdraft Coverage or Get More Information

To request overdraft coverage or information about other ways to cover your overdrafts:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

___ I want overdraft coverage for my ATM withdrawals and one-time debit card transactions.

___ I want information about other ways to cover my overdrafts.

Printed Name: _____

Date: _____

Account Number: _____

EXPLANATION OF OVERDRAFT COVERAGE

Description of Your Coverage

Unless you tell us otherwise, we provide overdraft coverage for your account. This means that if you do not have enough money in your account for an ATM withdrawal or a one-time debit card transaction, we may still authorize the transaction and pay the overdraft. Having overdraft coverage does **not** guarantee that we will authorize your overdrafts in all cases. If we decide to pay an overdraft, we will charge you a fee. See below for more information, including how to opt out if you do not want us to authorize any ATM or one-time debit card overdrafts.

Overdraft Fees

- We will charge you up to \$30 each time we pay an overdraft.
- We will also charge you \$5 for each day your account remains overdrawn.
- There is no limit on the total amount of fees we can charge you for overdrawing your account.

Your Right to Opt Out of Overdraft Coverage

You may opt out of overdraft coverage for ATM withdrawals and one-time debit card transactions by telling us not to authorize these transactions when you do not have enough money in your account. Opting out may allow you to limit the overdraft fees you are charged. However, some overdrafts could still occur even if you opt out. For example, you may have enough money in your account when we authorize a transaction, but other transactions may reduce the amount in your account before that transaction clears. If this causes an overdraft, you will be charged a fee.

Even if you opt out of coverage for ATM withdrawals and one-time debit card transactions, we may still pay overdrafts for other types of transactions, including checks and recurring debits. If we do pay these overdrafts, we will charge you a fee.

Other Ways to Cover Your Overdrafts

We offer other ways of covering your overdrafts that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How to Opt Out or Get More Information

To opt out of overdraft coverage or request information about other ways to cover your overdrafts:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

You do not need to do anything if you want overdraft coverage for your account.

I do not want overdraft coverage for my ATM withdrawals and one-time debit card transactions.
 I want information about other ways to cover my overdrafts.

Printed Name: _____

Date: _____

Account Number: _____

REQUESTING OVERDRAFT COVERAGE

Your Right to Request Overdraft Coverage

If you do not have enough money in your account for an ATM withdrawal or one-time debit card transaction, we will usually decline the transaction. In these cases, you may be unable to complete the transaction unless you have another form of payment. **If you want us to authorize and pay these overdrafts, you can request overdraft coverage.** Having overdraft coverage does **not** guarantee that we will authorize your overdrafts in all cases. If we decide to authorize and pay an overdraft, we will charge you a fee.

Even if you do not request overdraft coverage for ATM withdrawals and one-time debit card transactions, overdrafts could still occur in some cases. For example, you may have enough money in your account when we authorize a transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account and you will be charged a fee.

Whether or not you request overdraft coverage for ATM withdrawals and one-time debit card transactions, we may still pay overdrafts for other types of transactions, including checks and recurring debits. If we do pay these overdrafts, we will charge you a fee.

Overdraft Fees

- We will charge you up to \$30 each time we pay an overdraft.
- We will also charge you \$5 for each day your account remains overdrawn.
- There is no limit on the total amount of fees we can charge you for overdrawing your account.

Other Ways to Cover Your Overdrafts

We offer other ways of covering your overdrafts that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How to Request Overdraft Coverage or Get More Information

To request overdraft coverage or information about other ways to cover your overdrafts:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

I want overdraft coverage for my ATM withdrawals and one-time debit card transactions.
 I want information about other ways to cover my overdrafts.

Printed Name: _____

Date: _____

Account Number: _____

Appendix D: Disclosure Notices Used in Round 2 of Testing

- Notices Used on First Day of Testing:
 - Version O3
 - Version I3
- Notices Used on Second Day of Testing:
 - Version O4
 - Version I4
 - Version I5

YOUR CHOICES REGARDING OVERDRAFT COVERAGE

What is overdraft coverage?

Unless you tell us otherwise, we will automatically provide overdraft coverage for your account. This means that if you make a transaction for more money than you have in your account, we may authorize and pay the transaction anyway. However, having overdraft coverage does not guarantee that we will always authorize your overdrafts. *Note that this coverage differs from other overdraft services we offer, such as a link to another account you have with us or an overdraft line of credit.*

Will I be charged any fees for overdrawing my account?

Yes. We will charge you up to \$30 each time we pay an overdraft. There is no limit on the total amount of fees we can charge you for overdrawing your account.

What if I don't want overdraft coverage?

You can opt out of overdraft coverage for ATM withdrawals and individual debit card transactions (see below). However, even if you do opt out, we will still continue to provide overdraft coverage for checks, automatic bill payments, and other types of transactions. If we do pay these overdrafts, we will charge you fees.

Could I overdraw my account even if I opt out of overdraft coverage for ATM withdrawals and debit card transactions?

Yes, in some cases. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

What other options do I have for covering overdrafts?

We offer other ways of covering your overdrafts that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How do I opt out of overdraft coverage?

To opt out of overdraft coverage on ATM withdrawals and individual debit card transactions, or for information about other ways to cover your overdrafts:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

___ I do not want overdraft coverage for ATM withdrawals and individual debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

YOUR CHOICES REGARDING OVERDRAFT COVERAGE

What is overdraft coverage?

If you have overdraft coverage and make a transaction for more money than you have in your account, we may authorize and pay the transaction anyway. However, having overdraft coverage does not guarantee that we will always authorize your overdrafts. *Note that this coverage differs from other overdraft services we offer, such as a link to another account you have with us or an overdraft line of credit.*

Will I be charged any fees for overdrawing my account?

Yes. We will charge you up to \$30 each time we pay an overdraft. There is no limit on the total amount of fees we can charge you for overdrawing your account.

What are my choices regarding overdraft coverage?

We provide overdraft coverage on your account for checks, automatic bill payments, and some other types of transactions.

In addition, you have the option to sign up for overdraft coverage for ATM withdrawals and individual debit card transactions (see below).

Could I overdraw my account even if I don't sign up for overdraft coverage for ATM withdrawals and debit card transactions?

Yes, in some cases. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

What other options do I have for covering overdrafts?

We offer other ways of covering your overdrafts that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How do I sign up for overdraft coverage on ATM withdrawals and debit card transactions?

To sign up for overdraft coverage on ATM withdrawals and individual debit card transactions, or for information about other ways to cover your overdrafts:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

 I want overdraft coverage for ATM withdrawals and individual debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

YOUR CHOICES REGARDING OVERDRAFT COVERAGE

What is overdraft coverage?

Unless you tell us otherwise, we will automatically provide overdraft coverage for your account. This means that if you make a transaction for more money than you have in your account, we may authorize and pay the transaction anyway. However, having overdraft coverage does not guarantee that we will always authorize your overdrafts. *Note that this coverage differs from other overdraft services we offer, such as a link to another account you have with us or an overdraft line of credit.*

Will I be charged any fees for overdrawing my account?

Yes. We will charge you up to \$30 each time we pay an overdraft. There is no limit on the total amount of fees we can charge you for overdrawing your account.

What if I don't want overdraft coverage?

You can opt out of overdraft coverage for ATM withdrawals and individual debit card transactions (see below). However, even if you do opt out, we will still continue to provide overdraft coverage for checks, automatic bill payments, and other types of transactions. If we do pay these overdrafts, we will charge you fees.

Could I overdraw my account even if I opt out of overdraft coverage for ATM withdrawals and debit card transactions?

Yes, in some cases. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

What other options do I have regarding overdraft services?

We offer other overdraft services that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How do I opt out of overdraft coverage on ATM withdrawals and debit card transactions?

To opt out of overdraft coverage on ATM withdrawals and individual debit card transactions, or for information about other overdraft services:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

___ I do not want overdraft coverage for ATM withdrawals and individual debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

YOUR CHOICES REGARDING OVERDRAFT COVERAGE

What is overdraft coverage?

If you have overdraft coverage and make a transaction for more money than you have in your account, we may authorize and pay the transaction anyway. However, having overdraft coverage does not guarantee that we will always authorize your overdrafts. *Note that this coverage differs from other overdraft services we offer, such as a link to another account you have with us or an overdraft line of credit.*

Will I be charged any fees for overdrawing my account?

Yes. We will charge you up to \$30 each time we pay an overdraft. There is no limit on the total amount of fees we can charge you for overdrawing your account.

Do I have overdraft coverage on my account?

We provide overdraft coverage on your account for checks, automatic bill payments, and some other types of transactions.

In addition, you can also sign up for overdraft coverage for ATM withdrawals and individual debit card transactions (see below).

Could I overdraw my account even if I don't sign up for overdraft coverage for ATM withdrawals and debit card transactions?

Yes, in some cases. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

What other options do I have regarding overdraft services?

We offer other overdraft services that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How do I sign up for overdraft coverage on ATM withdrawals and debit card transactions?

To sign up for overdraft coverage on ATM withdrawals and individual debit card transactions, or for information about other overdraft services:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

 I want overdraft coverage for ATM withdrawals and individual debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

YOUR CHOICES REGARDING OVERDRAFT COVERAGE

What is overdraft coverage?

If you have overdraft coverage and make a transaction for more money than you have in your account, we may authorize and pay the transaction anyway. However, having overdraft coverage does not guarantee that we will always authorize your overdrafts. *Note that this coverage differs from other overdraft services we offer, such as a link to another account you have with us or an overdraft line of credit.*

Will I be charged any fees for overdrawing my account?

Yes. We will charge you up to \$30 each time we pay an overdraft. There is no limit on the total amount of fees we can charge you for overdrawing your account.

Do I have overdraft coverage on my account?

We provide overdraft coverage on your account for checks, automatic bill payments, and some other types of transactions.

We do not provide overdraft coverage on your account for ATM withdrawals and individual debit card transactions. However, if you want coverage on these transactions, you can sign up for it (see below).

Could I overdraw my account even if I don't sign up for overdraft coverage for ATM withdrawals and debit card transactions?

Yes, in some cases. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

What other options do I have regarding overdraft services?

We offer other overdraft services that may be less expensive, such as a link to another account you have with us or an overdraft line of credit. Ask us about these options.

How do I request overdraft coverage on ATM withdrawals and debit card transactions?

To request overdraft coverage on ATM withdrawals and individual debit card transactions, or for information about other overdraft services:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

 I want overdraft coverage for ATM withdrawals and individual debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

Appendix E: Disclosure Notices Used in Round 3 of Testing

- Notice Used on First Day of Testing:
 - Version I6
- Notice Used on Second Day of Testing:
 - Version I7

Note: Unlike the notices used in other rounds, Versions I6 and I7 were designed to be printed on legal-sized paper.

What You Need to Know about Overdrafts and Overdraft Fees

➤ **What is “overdraft coverage”?**

If you have overdraft coverage and do not have enough money in your account to cover a transaction, we may authorize and pay it anyway. We will charge you fees each time we pay an overdraft (see below).

Overdraft coverage is not the same as overdraft protection plans that we offer, which link your account with a savings account, a credit card account or a line of credit.

➤ **Do I have overdraft coverage on my account?**

It depends on the kind of transaction you are making, as shown in the table below.

Type of transaction	Do I have overdraft coverage?*
- Checks	Yes
- Automatic bill payments	Yes
- Transactions using your checking account number	Yes
- ATM transactions	No, unless you sign up for it (see below)
- One-time debit card transactions	No, unless you sign up for it (see below)

*Overdraft coverage is discretionary, and does not guarantee that we will pay all overdrafts.

➤ **What happens if I don't have overdraft coverage for a transaction?**

If you do not have overdraft coverage, in most cases your transactions will be declined or returned.

However, there may be instances when you can still overdraw your account. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

➤ **What are the fees for overdraft coverage?**

Type of fee	Fee**
- Overdraft fee	Up to \$30 for each overdraft item.
- Sustained overdraft fee	\$5 per day, if your account is overdrawn for 5 or more consecutive business days.

**There is no limit on the total fees we can charge you for overdrawing your account.

➤ **What alternatives do I have to overdraft coverage?**

We offer overdraft protection plans that may be less expensive than overdraft coverage. These plans link your account to another account with us, such as a savings account, credit card account or line of credit. Ask us about these plans.

➤ **How can I sign up for overdraft coverage for ATM and one-time debit card transactions?**

To sign up for overdraft coverage for ATM and one-time debit card transactions, or for information about overdraft protection plans:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

 I want to sign up for overdraft coverage for ATM and one-time debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

What You Need to Know about Overdrafts and Overdraft Fees

➤ **How does Solar Bank treat overdrafts on my account?**

Even if you do not have enough money in your account to cover a transaction, we may authorize and pay it anyway depending on the type of transaction you make. If we do, we will charge you fees (see below). This service, which comes with your account, is called “overdraft coverage.”

As an alternative to overdraft coverage, we also offer overdraft protection plans that may be less expensive. Ask us about these plans. Our overdraft protection plans include:

- A link to a savings account you have with us;
- A link to a credit card you have with us; or
- An overdraft line of credit.

➤ **How does overdraft coverage apply to my account?**

Overdraft coverage applies as shown in the table below.

Type of transaction	Do I have overdraft coverage?*
Checks	Yes
Automatic bill payments	Yes
Transactions using your checking account number	Yes
ATM transactions	No, unless you sign up for it (see below)
One-time debit card transactions	No, unless you sign up for it (see below)

*Overdraft coverage is discretionary, and does not guarantee that we will pay all overdrafts.

➤ **What happens if I don't have overdraft coverage for a transaction?**

If you do not have overdraft coverage, in most cases your transactions will be declined or returned.

However, there may be instances when you can still overdraw your account. For example, you may have enough money in your account when we authorize a debit card transaction, but other transactions may reduce the funds in your account before that transaction clears. This may cause you to overdraw your account, and you will be charged fees.

➤ **What are the fees for overdraft coverage?**

Type of fee	Fee**
Overdraft fee	Up to \$30 for each overdraft item.
Sustained overdraft fee	\$5 per day, if your account is overdrawn for 5 or more consecutive business days.

**There is no limit on the total fees we can charge you for overdrawing your account.

➤ **How can I sign up for overdraft coverage for ATM and one-time debit card transactions?**

To sign up for overdraft coverage for ATM and one-time debit card transactions, or for information about overdraft protection plans:

- Call us at 1-800-555-1234;
- Visit www.solarbank.com/overdrafts; or
- Complete the form below and mail it to Solar Bank, P.O. Box 1234, Pittsburgh, PA 19714.

 ___ I want to sign up for overdraft coverage for ATM and one-time debit card transactions.

Printed Name: _____

Date: _____

Account Number: _____

Appendix F: Disclosure Notice Used in Round 4 of Testing

- Notice Used on Both Days of Testing:
 - Version I8

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 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 Solar Bank 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 also want Solar Bank 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 1-800-555-1234 or visit www.solarbank.com/overdrafts.



Macro International Inc.
11785 Beltsville Drive
Calverton, MD 20705

www.macrointernational.com