



By Fax (202-874-4950) and First Class Mail

October 13, 2010

The Honorable John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219-001

Dear Acting Comptroller Walsh:

As banks continue their campaigns to persuade consumers to agree to pay steep fees for debit card overdrafts, we urge the Office of Comptroller of the Currency to adopt stricter guidance that effectively requires banks to use fair overdraft practices and fully inform consumers. In the past several months, our organizations filed comments in dockets opened by the Office of Thrift Supervision (OTS)¹ and the FDIC² to update and strengthen their guidelines for overdraft programs. We urge the OCC to also revisit overdraft abuses that remain and to update the standards you apply to banks.

In late June, the Consumer Federation of America released a survey of the fifteen largest banks' overdraft fees, limits, and total costs per day of overdrafts (Attachment A). CFA documented that fees charged bear no relationship to the amount overdrawn, that bank limits on the number of fees charged per day fail to provide real protection against fee gouging, and that nine of the fifteen largest banks continue to charge two or more fees for a single overdraft. Most of the largest banks are soliciting their customers to pay for overdrawn debit card transactions that could easily be denied at no charge to their customers. Notably, however, one large bank—Citibank—has never charged overdraft fees on debit card transactions, and the largest issuer of debit cards, Bank of America, stopped those fees this summer.

¹ Comments on OTS Supplemental Guidance on Overdraft Protection Programs, OTS 2010-0008 (June 2010), available at <http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/OTS-overdraft-guidance-comment-June-2010.pdf>.

² Comments on FDIC's Proposed Overdraft Payment Supervisory Guidance, FIL-47-2010 (Sept. 2010), available at FDIC at <http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/Overdraft-Comment-FDIC-Guidance-Sept-27-2010-FINAL.pdf>.

We are monitoring overdraft opt-in messages and forms used by the largest banks as well as examples provided to us by our members. Several banks' claims and products are cause for concern, which we detail below. Across the board, failure by the Federal Reserve to regulate overdraft programs under the Truth In Lending Act and to provide cost information in tabular format means that consumers are being asked to make an uninformed decision to use banks' most expensive form of credit.

In this letter, we urge the Office of Comptroller of the Currency to update your guidance to banks on overdraft programs consistent with our recommendations to the OTS and the FDIC. We especially urge that you address transaction posting order immediately, particularly in light of recent judicial and regulatory actions. We also provide examples of troubling products and messages from opt-in marketing currently used by the largest national banks and request corrective action from the OCC.

I. Accountholders Should Receive the Lowest-Cost Overdraft Credit for Which They Qualify.

The OCC and other federal banking regulators have long acknowledged that “[w]hen overdrafts are paid, credit is extended,”³ even as the Federal Reserve continues to fail to regulate overdrafts under the Truth in Lending Act. Fee-based overdrafts are clearly credit now more than ever: To encourage account holders to opt in, banks are promoting these programs as an emergency source of funds, and in many cases account holders are choosing to opt in with an expectation that they will be “covered.”⁴ Overdraft programs, then, are clearly being marketed as short-term loans—i.e., credit.

Customers should not be steered into higher-cost credit than that for which they qualify. The Dodd-Frank regulatory reform bill prohibits creditors from offering financial incentives for originators to steer borrowers into more expensive mortgage loans than they qualify for.⁵ The Federal Reserve's recently finalized mortgage rules do the same.⁶ Steering in the context of other forms of credit is no more appropriate than it is in the mortgage context.

³ Department of the Treasury-Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Joint Guidance on Overdraft Protection Programs, 70 Fed. Reg. 9127, 9129 (Feb. 24, 2005) [hereinafter 2005 Joint Guidance].

⁴ For example, TD Bank calls its overdraft coverage the “TD Debit Card Advance.” Claims for its \$35 overdraft program read just like the solicitations for a credit product. “This safety net enables you to make a debit card purchase or ATM withdrawal, even when you do not have enough money available in your checking account.” The bank's website presents examples of “coverage when you need it most,” including Molly who needs to buy asthma medicine, Mike and Karen who get in trouble with a joint account, Lisa who needs to buy groceries, and Mike who wants cash to go on a date. www.tdbank.com/TDadvance/index.html, (last visited Sept. 26, 2010).

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203. Section 1403 prohibits a mortgage originator from receiving, “directly or indirectly, compensation that varies based on the terms of the loan, other than the amount of the principal.” It also prohibits originators from steering borrowers from a qualified mortgage (one with generally less risky terms) to a non-qualified mortgage (one with generally riskier terms); to a loan that the consumer lacks a reasonable ability to repay; and to a loan that has “predatory characteristics (such as equity stripping, excessive fees or abusive terms).”

⁶ 75 Fed. Reg. 58509, Federal Reserve Board Final Rule, Regulation Z (Sept. 24, 2010), 12 CFR 226.36(e)(1): “In connection with a consumer credit transaction secured by a dwelling, a loan originator shall not direct or ‘steer’ a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest.”

Banks typically carry a far lower-cost option—an overdraft line of credit—and many also offer transfers from credit cards, which are also typically less expensive. The OCC should require the following: Any account holder who indicates a desire for overdraft coverage must be evaluated by the bank using whatever requirements the bank uses to determine who qualifies for an overdraft line of credit, a link to a credit card, or any other lower-cost overdraft option the bank offers. Only account holders who do not qualify for a lower-cost option should be enrolled in fee-based overdraft.

II. Overdraft Fees Should be Reasonable and Proportional in Amount and Frequency.

A. Amount

As the CFA survey demonstrates, the largest banks' overdraft fees bear no relationship to the amount of credit extended or the cost to the institution for paying overdrafts. While the FDIC found that the average debit card point-of-sale overdraft is just \$20, the largest banks charge up to \$37 per item.

The typical big bank overdraft fee is \$35, while banks that set a trigger on the size of overdrafts that trigger a fee will charge if total overdrafts in one day exceed just \$1 to \$10. Citizens Bank charges its \$37 fee if a transaction of one dollar or more overdraws the account. At the lowest fee, US Bank charges \$10 for an overdraft of \$20 or less. It should be an unfair trade practice for national banks to charge such steep fees for small overdrafts.

Under current fee structures at the largest banks, a two-week \$100 overdraft costs over 900 percent APR if computed as a closed-end loan. Since an overdraft fee is in fact a fee for access to credit, *banks should not charge more for fee-based overdrafts than they do for overdraft lines of credit* – typically 18 percent APR. *At a minimum*, the OCC should use the Credit CARD Act treatment of over-the-limit fees on credit cards as an example of how bank overdraft fees could be set and applied. In its rulemaking under the CARD Act, the Federal Reserve generally considered delinquency resolution costs to be the only permissible factor in setting credit card penalty fees. Since banks repay themselves from the customer's subsequent deposit, such costs are extremely minimal in the overdraft context.

B. Frequency

Nine of the largest banks charge sustained overdraft fees if the overdraft and fee are not repaid in as little as three days. The total cost of a single \$10 overdraft repaid in ten days is \$93 at Fifth Third Bank, \$78 at PNC, and \$72 at SunTrust. The limits on the number of fees charged per day provide no meaningful restraints. Chase Bank charges \$34 if a customer overdraws by just \$5. HSBC, PNC, TD Bank and Wells Fargo set no minimum overdraft to trigger fees. Almost all the largest banks now have a daily maximum limit on the number of fees to charge, but this provides little protection.

The OCC's recent overdraft \$33 million enforcement action involving Woodforest National Bank illustrates the harm to consumers caused by unlimited frequency of overdraft fees. The Bank set no limits on the amount of fees a consumer could incur. The Bank charged a second sustained overdraft fee when consumers had not repaid overdrafts within seven days. In its consent order to Woodforest National Bank, the OCC noted that sustained overdraft fees, or "continuous overdraft fee(s)," are unfair

because “once continuous overdraft fees began, many Bank customers were unable to avoid the assessment of continuous overdraft fees.”⁷

Woodforest National Bank was not alone in assessing these types of continuous overdraft fees or failing to monitor excessive use. As noted above, even those institutions who have limits or purport to monitor excessive use still allow overdraft fees of hundreds of dollars *per day*. The FDIC’s recent proposed guidance recognizes that charging more than six overdraft fees *within a twelve-month period* constitutes excessive use. We urged the agency to explicitly limit overdraft fees to six within one year, and we urge the OCC to do the same.

(It is worth noting that banks have even begun to create new products to enable consumers to *perhaps* avoid the steep overdraft fees they set. Citizens Bank charges \$37 per item after the first day in a year when an account is overdrawn and charges up to seven fees in a single day. If the overdraft is not repaid in three days, Citizens charges \$6.99 per day on the fourth through thirteenth day of overdrawn status. In a classic example of creating your own demand, Citizens also markets “Buffer Zone,” for a monthly \$4.99 fee to avoid fees on overdrafts that total only \$30 during the month. Given that the average debit card purchase overdraft is \$20, this “protection” is easily exceeded, resulting in users still being charged overdraft fees. And, consumers opting into Buffer Zone pay the \$4.99 month after month even when no transactions overdraw the account.)

III. Posting Transactions in an Order that Maximizes Fees Should Be Prohibited.

All of the largest banks process payments largest first, which significantly increases fees for low-balance customers. Paying largest transactions first causes substantial consumer injury, causing multiple fees when a single large payment exhausts available funds. The injury is not reasonably avoidable by consumers since accountholders have no control over the order in which institutions clear transactions. And the injury is not outweighed by countervailing benefits to consumers or competition. Banks with fee-based overdraft programs pay the bulk of all transactions, so arguing that consumers benefit from high-to-low processing order is disingenuous. Banks make vague disclosures about processing order and do not compete on the basis of paying the most transactions possible from available funds. Processing transactions in order from high to low is a revenue enhancer, not a consumer service.

Beyond clearing transactions from high to low, banks can further maximize fees through the order in which they clear different transaction types (debit card, ACH, checks, etc.). A federal court recently found in *Gutierrez v. Wells Fargo* that the bank had changed its procedure to process all withdrawals together, rather than paying all (typically smaller) debit card transactions before all (typically larger) checks, to maximize fees.⁸

The court in that case ordered Wells Fargo to pay over \$200 million to its California customers alone in reimbursement for fees caused *solely* by transaction reordering. The court noted, “the only motives

⁷ Comptroller of the Currency, Consent Order In the Matter of Woodforest National Bank, AA-EC-10-93, #2010-202, October 6, 2010, page 2.

⁸ *Gutierrez v. Wells Fargo Bank, N.A.*, IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, No. C 07-05923 (August 10, 2010), WL 3155934 (N.D.Cal.), [hereinafter *Gutierrez v. Wells Fargo Bank, N.A.*].

behind the challenged practices [high to low processing and authorizing debit card overdrafts] were gouging and profiteering⁹ and high to low processing is “a trap - a trap that would escalate a single overdraft into as many as ten through the gimmick of processing in descending order. It then exploited that trap with a vengeance, racking up hundreds of millions off the backs of the working poor, students, and others without the luxury of ample account balances.”¹⁰

Manipulation of transaction ordering has long been a concern for regulators. The 2005 Joint Guidance raises the issue but only recommends that banks inform customers that transaction ordering may increase fees.¹¹ In its own 2005 guidance, the OTS went further, explicitly stating that, as a best practice, transaction-clearing processes should not be manipulated to inflate fees.¹² In its 2009 final Regulation E rule, the Federal Reserve identified transaction posting order as an area that may need additional consumer protections and indicated it would continue to assess it.¹³

The FDIC’s recently proposed guidance marks a significant step forward in this area, noting that the agency expects banks to avoid maximizing overdrafts through clearing order and providing two examples of appropriate procedures: clearing items in the order received or by check order.

We urge the OCC to put a stop to this “gouging and profiteering” by national banks immediately by making clear that banks should not—

- process transactions in order from high to low, within a single transaction type or across all transaction types; or
- process debit card and ATM transactions before other transactions in order to maximize overdraft fees for account holders who are not enrolled in fee-based overdraft for debit card and ATM transactions; or
- otherwise post transactions in an order that maximizes fees.

IV. Meaningful Cost Disclosures Should Be Required.

A. Banks are marketing overdraft opt-in as credit.

Our organizations have consistently argued that banks extend credit when they cover overdrafts for a fee and that consumers must have the protections extended by the Truth in Lending Act when using this expensive form of credit. The Federal Reserve has to date declined to require banks to comply with Truth in Lending requirements when extending short-term credit through “courtesy” overdrafts.

Banks marketing overdraft opt-in blur the distinction between a “service” and a “loan.” TD Bank calls its overdraft coverage the “TD Debit Card Advance.” Claims for its \$35 overdraft program read just like the solicitations for a credit product. “This safety net enables you to make a debit card purchase or

⁹ Gutierrez v. Wells Fargo Bank, N.A., --- F. Supp.2d ---, 2010 WL 3155934, *31 (N.D. Cal. Aug. 10, 2010)

¹⁰ Id. at *39.

¹¹ 2005 Joint Guidance, 70 Fed. Reg. 9132; OTS Guidance, 70 Fed. Reg. 8428, 8431 (2005) [hereinafter 2005 OTS Guidance].

¹² 2005 OTS Guidance, 70 Fed. Reg. 8341.

¹³ 74 Fed. Reg. 59050: “The Board recognizes that additional consumer protections may be appropriate with respect to overdraft services, for example, rules to address transaction posting order. Therefore, the Board is continuing to assess whether additional regulatory action relating to overdraft services is needed.”

ATM withdrawal, even when you do not have enough money available in your checking account.” The bank’s website presents examples of “coverage when you need it most,” including Molly who needs to buy asthma medicine, Mike and Karen who get in trouble with a joint account, Lisa who needs to buy groceries, and Mike who wants cash to go on a date.¹⁴

Despite marketing fee-based overdraft as a line of credit or cash advance, consumers do not get credit protections. They do not see an APR disclosure to help make a decision and banks are permitted to use set-off to take payment out of the next deposit into the account, both of which would be addressed by Truth in Lending Act coverage. If banks are permitted to market overdraft opt-in as an “advance,” overdrafts should be subject to Truth in Lending.

B. Regulations E and DD do not require adequate cost information.

The Model debit overdraft opt-in form issued by the Federal Reserve does not require banks to display the comparable cost of all overdraft options to consumers. While the model form requires that banks list the other overdraft products and services they provide, consumers do not see a standardized form that spells out the cost of all options, including that declining to opt in costs nothing. Consumers must be given information about the comparative cost of each alternative in order to make a truly informed and meaningful choice, including a sample APR disclosure to compare fee-based overdraft loans with a traditional overdraft line of credit or transfer from a credit card. Every opt-in form should prominently display that the cost of not opting in to ATM and one-time debit card overdraft coverage as \$0. Consumers should get a clear and prominent message that declining to opt in means *they will never incur any overdraft fees for ATM and single debit card transactions*.

A video on Regions Bank’s website describes overdraft opt-in without ever mentioning the fee consumers will have to pay. Fee information is in the fine print at the bottom of the web page and in the bank’s FAQs but not in the oral/visual presentation (Attachment B).¹⁵ Most banks claim that it costs nothing to opt in, as long as you never overdraw. For example, the Wells Fargo brochure states “There is no fee to add the Debit Card Overdraft Service to your account and no fee if it is never used.”¹⁶ While technically true, the implication is that there is little risk of a high fee for consumers to opt in. Citizens Bank’s “A Guide to Standard Overdraft Practices” brochure asks the question “Are there fees?” but only answers with “Standard overdraft fees apply when the bank pays an overdraft on your behalf.” The actual fees are only disclosed in the fine print at the end of the text.¹⁷ The Citizens Bank opt-in notice spells out fees, but its three-page web page—What You Should Know About Overdrafts—makes no mention of the overdraft fee and only discloses the sustained overdraft fee (Attachment C).¹⁸ Banks should have to clearly and prominently state the dollar amount of overdraft fees on every document, brochure, or web page that discusses overdrafts.

Banks are not required to tell customers the total cost they could be obligated to pay per day under the banks’ fee structure and limits. Opt-in forms typically disclose the various cost elements but do not calculate the total amount consumers could be charged. Consumers opting in to TD Bank’s debit card

¹⁴ www.tdbank.com/TDadvance/index.html, last visited October 1, 2010.

¹⁵ <http://www.regions.com/faq/coverage.rf#Q01>, last visited October 1, 2010 (Attachment 2).

¹⁶ Wells Fargo brochure, “Balancing Your Life and Your Money,” received from customer May 21, 2010, on file with CFA.

¹⁷ Citizens Bank, “A Guide to Standard Overdraft Practices,” brochure, on file with CFA.

¹⁸ <http://www.citizensbank.com/moneyhelp/budgeting/what-you-should-know-about-overdrafts.aspx>, last visited October 1, 2010 (Attachment C).

overdrafts are being subjected to as much as \$210 in fees, while Fifth Third Bank's customers are being subjected to as much as \$370 in fees, in one day. A BB&T customer is being subjected to \$140 in fees if overdrawn by as little as \$5.01 in one day. But that information is not presented to consumers in a clear format.

All of the largest banks continue to cover overdrafts triggered by checks, preauthorized payments, and recurring debits for a fee without affirmative consent from consumers. While Reg E only requires opt-in for single debit purchase and ATM overdrafts, most of the largest banks have not gone beyond the letter of the rules to give their accountholders control over payment of all overdrafts. The OCC should use its authority to require national banks to get customers' affirmative consent to pay overdraft fees for all types of transactions. It should be an unfair trade practice for a bank to unilaterally decide to cover overdrafts for a fee.

V. Pressuring Consumers or Seeking Their Consent More Than Once Should Be Prohibited.

During the past few months, it appears that a number of banks have been pressuring consumers or asking them repeatedly to opt in to overdraft coverage. In one instance, this badgering occurred even after the consumer affirmatively declined to opt in. This consumer, who is an attorney, described how Chase repeatedly badgered him to opt in:

“no idea if these will be helpful, but the first two pages of the first attached file [Attachment D] are what i have received in the mail from Chase many, many times, in addition to online solicitations when i log into my account. finally yesterday i went into the bank and told them i wanted the mailings to stop. they were surprised i didnt want the protection. mentioned that i might be embarrassed if my card is declined, etc. the third page is what they gave me at the bank when i signed the document stating that i do not want the protection.

the second file [Attachment E] is what chase offers online re overdraft protection.

the requirement is you opt in, but apparently there is no prohibition on hounding people who have not affirmatively opted out.”

Email from Craig M. Shapiro, Horwitz, Horwitz & Associates, Ltd to Jean Ann Fox, July 21, 2010.

Furthermore, this repeated badgering occurred after the consumer had already affirmatively informed Chase that he wanted to opt out, as the attorney clarified in a second email:

“also, the first time i logged into my account and was offered the overdraft protection, i clicked on something stating that i did not want the protection. according to the guy at chase yesterday, the solicitations should have stopped after that. he also said that after noting it in my account yesterday, the solicitations should stop immediately. i continue to get them every time i log into my account. i anticipate getting more mailings, and will let you know if they continue to pressure me into signing up. thankfully im not the average consumer....

Email from Craig M. Shapiro, Horwitz, Horwitz & Associates, Ltd to Jean Ann Fox, July 21, 2010.

In March of this year, the undersigned groups sent the OCC a letter documenting the deceptiveness of Chase's overdraft solicitations. However, this repeated badgering of customers to sign up is in addition to those practices. A news report from this summer noted that Chase has stationed employees near its ATMs in order to urge customers to opt in.¹⁹

Chase is not the only bank repeatedly badgering consumers to opt in. U.S. Bank, in its own email solicitations, mentions that it has sent more than one message asking for opt in. (Attachment F).

In another example, TD Bank would not permit the consumer -- a law school intern at one of the undersigned groups -- to open an account unless she decided whether to opt in or opt out, even after she indicated she wanted to make the decision later. The intern described the following:

Mr. Belmarsh [TD Bank Store Manager] then asked me whether I was going to “opt-in” or “opt-out” of the Debit Card Advance program. I said I was not sure yet, and then asked Mr. Belmarsh if I could make a decision later. I stated that I wanted some time to think about which choice I would make. He told me that I must either “opt-in” or “opt-out” now, in order to open the account. Mr. Belmarsh was firm in his assertion that I had to make the decision right then. I was under the impression that his software would not allow him to proceed with opening my account unless he clicked on either an “opt-in” or “opt-out” field on the computer.

Affidavit of Rachael Rothman, attached as Attachment G.

The OCC should prohibit the banks that it supervises from repeatedly asking consumers to opt in. The institution should be permitted to only ask the consumer one time if she wants to opt in. If the consumer declines to opt in, or to provide an answer, the institution should be required to assume that the consumer does not wish to opt in and not solicit the consumer again.

There is ample precedent for a rule that permits an institution to seek a consent only once. For example, the IRS regulations governing the privacy of tax returns provide that a tax preparer may seek the consent of a customer to use tax information for marketing purposes only one time. If the customer declines the request, the tax preparer cannot solicit the customer again for the same type of request. 26 C.F.R. § 301.7216-3(b)(3).

Furthermore, this repeated badgering and pressuring of consumers to opt in appears to be designed to counter the “default effect” the Federal Reserve clearly intended to establish when crafting its final rule.²⁰ By undermining the default effect, institutions undermine the intent and effectiveness of the rule, and such efforts should be expressly prohibited.

VI. Deceptive Opt-In Solicitations Should Be Monitored and Prohibited.

In its recently issued clarification to its Regulation E final rule, the Federal Reserve noted that “under Regulation DD, advertisements may not be misleading or inaccurate” and that “institutions must not

¹⁹ Laura Northrop, *Chase Now Has Human ATM Greeter Who Helpfully Sells Overdraft Protection*, The Consumerist, July 14, 2010, available at <http://consumerist.com/2010/07/chase-installs-atm-greeter-who-sells-debit-card-overdraft-protection.html>, last visited October 1, 2010.

²⁰ 74 Fed. Reg. 59038.

market their overdraft services in a manner that constitutes an unfair or deceptive practice” within the meaning of the FTC Act.²¹ The OCC’s own recent guidance addressing opt-in requirements and related marketing issues also cautions against deceptive marketing.²² Yet institutions are employing a range of deceptive tactics in their opt-in solicitations that must be addressed.

A. Some solicitations state or strongly imply that a cost will be incurred when a debit card overdraft is denied.

In its Final Regulation E rule issued in November 2009, the Federal Reserve stated that charging insufficient funds fees on denied debit card transactions would raise “significant fairness concerns” under the FTC Act.²³ The OCC’s recent guidance also instructed institutions not to suggest that declined debit card transactions would result in fees.²⁴ Yet some opt-in solicitations state or suggest that a denied debit card transaction will incur a fee.

B. Some solicitations suggest that a debit card or an account will not function correctly if the customer does not opt in.

The OCC’s recent marketing guidance specifically instructs institutions not to provide “misleading representations or omissions about . . . the consequences of opting in or failing to opt in for transactions that are affected.”²⁵ A brochure sent to consumers by Comerica Bank in large type proclaims “After August 15th, A New Change To A Federal Regulation Could Limit Your Comerica *Check Card* Usage. Will You Be Affected?”²⁶ Similarly, a Chase mailer states in a prominent box “How Your Debit Card Works Will Change. Unless We Hear From You.”²⁷

C. Some solicitations overpromise overdraft coverage.

The Reg E rules provide that it is discretionary on the part of banks to cover any given transaction that would overdraw an account. While the bank opt-in forms typically emphasize that covering overdrafts is discretionary for banks, some marketing presents this product using terms and promises you would expect to see for a credit card, a line of credit, or even for a payday loan.

TD Bank overpromises the reliability of its coverage in its brochure, which states: “Once you’re enrolled in TD Debt Card Advance, you’ll have peace of mind knowing we’ve got you covered!”²⁸ The big print on its website trumpets “We’ve got you covered,” while the smaller print says “. . . you may be able to make a debit card purchase or ATM withdrawal even when you do not have enough money available in your checking account.”²⁹ The FAQs in TD Bank’s brochure skirts the question “If I sign up, will my debit card charges always be approved?” by saying that the bank considers the relationship, account

²¹ 75 Fed. Reg. 107.

²² OCC Bulletin OCC 2010-15, “Overdraft Protection: Opt-In Requirements and Related Marketing Issues,” April 12, 2010.

²³ 74 Fed. Reg. 59050.

²⁴ OCC Bulletin OCC 2010-15, “Overdraft Protection: Opt-In Requirements and Related Marketing Issues,” April 12, 2010.

²⁵ *Id.*

²⁶ Comerica Bank brochure, 01/10, on file with CFA.

²⁷ Chase letter to accountholders, on file with CFA.

²⁸ TD Bank brochure on TD Debt Card Advance, 62-9188(05/10) on file with CFA.

²⁹ www.tdbank.com/TDadvance/index.html, last visited October 1, 2010.

history and spending patterns in deciding whether to approve or decline a transaction. Only in the fine print on the back of the brochure does TD Bank spell out that payment is at the bank's discretion.

VII. Conclusion

Banks have a huge revenue incentive to enlist their accountholders to opt in to debit card overdraft programs. In addition to the \$24 billion collected annually in total overdrafts, banks stand to lose the interchange fees that would have been collected for denied debit purchases. As a result of this financial incentive to "keep your debit card working as usual," and the inadequate Federal Reserve Reg E opt-in rules and model form, the OCC must use its supervisory and enforcement authority, including its UDAP enforcement authority pursuant to the Federal Trade Commission Act, to make sure consumers are protected and can make informed decisions. Please let us know if we can answer questions or provide further information.

Sincerely,

Jean Ann Fox
Consumer Federation of America

Chi Chi Wu
National Consumer Law Center
(on behalf of its low income clients)

Rebecca Borne
Center for Responsible Lending

Lauren Z. Bowne
Consumers Union

Linda Sherry
Consumer Action

Ed Mierzwinski
U.S. Public Interest Research Group

Cora Ganzglass
National Association of Consumer Advocates

CC: Ms. Sheila Bair, Federal Deposit Insurance Corporation
Mr. John Bowman, Office of Thrift Supervision
Ms. Debbie Matz, National Credit Union Administration
Mr. Benjamin Bernanke, Federal Reserve Board

Representative Carolyn Maloney

Senator Christopher Dodd



Consumer Federation of America

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CFA Survey of Big Bank Overdraft Fees and Terms

In June, 2010, CFA collected debit card and ATM overdraft opt-in notices and/or fee schedules for the nation's fifteen largest banks by visiting websites or branches, or calling customer service. Generally, these overdraft fees and limits will be in effect when Federal Reserve rules for ATM and debit card transactions opt-in take effect August 15. The chart shows the fees charged when a customer's debit card purchase, ATM withdrawal, check or preauthorized debit exceeds the available funds and the bank covers the transaction. Tiered fees are imposed based on the number of overdrafts in a twelve month period. "Sustained" overdraft fees are charged when consumers have not repaid the amount overdrawn plus the initial fee within a few days and are either a one-time or a periodic fee. The last column shows the total cost of one \$10.01 overdraft if not repaid in ten business days, using the highest fee/s charged by the bank.

Bank	OD Fee	Sustained OD Fee	Cost of \$10 10-day OD
Bank of America ¹	\$35	\$35 after 5 days	\$70
BB&T	\$35	\$30 after 7 days	\$65
Capital One	\$35	None	\$35
Chase ²	\$34	\$15 after 5 days	\$49
Citibank ³	\$34	None	\$34
Citizens Bank/RBS	\$22 first OD \$37 2 or more	\$6.99 per day 3-12 th day	\$85.93
Fifth Third Bank	\$25 first OD \$33 2 to 4 OD \$37 5 or more	\$8/day after 3 days	\$93
HSBC	\$35	None	\$35
PNC Bank	\$25 first OD \$36 2 or more	\$7/day after 4 days up to \$98 max	\$78
Regions	\$35	None	\$35
Suntrust	\$36	\$36 on 7 th day	\$72

¹ Bank of America does not permit single debit transactions and ATM withdrawals to overdraw an account.

² Chase Bank does not permit ATM withdrawals to overdraw an account. Chase adds a \$10 fee for Basic Checking accounts that have a negative balance in a month.

³ Citibank does not permit single debit transactions and ATM withdrawals to overdraw an account.

Bank	OD Fee	Sustained OD Fee	Cost of \$10 10-day OD
TD Bank ⁴	\$35	\$20 on 10 th day	\$55
US Bank	\$10 up to \$20 OD \$33 per OD>\$20	\$25 per week on 8 th day	
Wells Fargo/ Wachovia	\$35	None	\$35

Bank Overdraft Thresholds and Daily Limits

Bank	Overdraft to Trigger Fee	Daily Maximum OD Fees
Bank of America	\$10 total overdraft	4 Check, other ODs
BB&T	\$5 total overdraft	4 ATM and Debit ODs
Capital One	\$5 total overdraft	4
Chase	\$5	3
Citibank	None	4 Check, other ODs
Citizens/RBS	\$85.93 \$10 on Circle Gold Account	7
Fifth Third	\$5.01 overdraft	10
HSBC	None	No Limit
PNC	None	4
Regions	\$5.01 total overdraft	4
SunTrust	\$5 item	6 OD and 6 NSF
TD Bank	None	6 total OD and NSF
US Bank	\$10 total overdraft	3 OD and 3 NSF
Wells Fargo/Wachovia	None	4 OD and NSF

⁴ TD Debit Card Advance

CFA Bank Debit Card Overdraft Total Costs and APRs

CFA computed the total obligation consumers agree to pay if they opt in to have debit card single purchases and ATM withdrawals paid by their bank for a fee. The total is based on the top initial fee charged by the bank and takes into account the number of overdraft fees limit per day. It does not include any sustained overdraft fees charged. The second column displays an APR for a single \$100 overdraft repaid in two weeks, using the top fee charged by the bank and any sustained overdraft fees applied, computed as if this were a closed-end payday loan. Banks that deny debit card overdrafts for no fee are not listed. Fees and limits used will be in effect by August 15, 2010 when Federal Reserve opt-in rules apply to all accountholders.

Bank	Total Daily Overdraft Fees	APR for \$100 2-week OD
BB&T	\$140 if overdrawn \$5.01	1,690% APR ¹
Capital One	\$140 if overdrawn \$5.01	910% APR ²
Chase	\$102 if overdrawn \$5.01	1,274% APR ³
Citizens Bank/RBS	\$259 for 7 \$1 debits	2,779% APR ⁴
Fifth Third Bank	\$370 for 10 \$5.01 overdrafts	3,250% APR ⁵
HSBC	No limit on # of \$35 fees	910% APR ⁶
PNC	\$144 for 4 ODs	2,756% APR ⁷
Regions	\$140 if overdrawn \$5.01	910% APR ⁸
SunTrust	\$216 for 6 \$5 or more ODs	1,872% APR ⁹
TD Bank	\$210 for 6 ODs	1,430% APR ¹⁰
US Bank	\$30 for 3 ODs if \$20 or less \$99 for 3 ODs if over \$20 each	2,158% APR ¹¹
Wells Fargo/ Wachovia	\$140 for 4 ODs	910% APR ¹²

¹ BB&T: \$35 OD fee + \$30 after 7 days=\$65 total fee for 2-week OD

² Capital One: \$35 OD fee for 2-week OD

³ Chase: \$34 OD fee + \$15 after 5 days=\$49 total fee for 2-week OD

⁴ Citizens/RBS: \$37 OD fee + \$6.99 per day (3-12th days, or \$69.90) = \$106.90 total fee for 2-week OD

⁵ Fifth Third: \$37 OD fee + \$8 per day after 3 days (4-14th day or \$88) = \$125 total fee for 2-week OD

⁶ HSBC: \$35 OD fee for 2-week OD

⁷ PNC: \$36 OD fee + \$7/day after 4 days (10 x \$7) \$70 = \$106 for 2-week OD

⁸ Regions: \$35 OD fee for 2-week OD

⁹ SunTrust: \$36 OD fee + \$36 on 7th day = \$72 for 2-week OD

¹⁰ TD Bank: \$35 OD fee + \$20 on 10th day = \$55 for 2-week OD

¹¹ US Bank: \$33 OD fee + \$50 (\$25 per week) = \$83 for 2-week OD

¹² Wells Fargo/Wachovia: \$35 OD fee for 2-week OD

Overdraft Coverage FAQs

ANSWERS TO YOUR QUESTIONS.

Recent federal changes may have affected your CheckCard, so it's important to understand Standard Overdraft Coverage and how it affects you. That's why we've provided some of the most commonly asked questions and answers below.

Why is Standard Overdraft Coverage important to me?

Are there other options besides opting in to Standard Overdraft Coverage?

Do I need Standard Overdraft Coverage if I already have Regions Overdraft Protection?

How do the federal changes affect me?

What if I opened my account on or after May 1, 2010?

What are "everyday CheckCard transactions"?

What if I make a deposit to cover an overdraft?

Does the upcoming regulatory change affect other types of transactions, such as when I write a check?

What if I choose to continue Standard Overdraft Coverage but change my mind later?

Do I have to make a selection regarding Overdraft Coverage on my business account?

What are the fees for overdrafts?

How do I opt in/out for Standard Overdraft Coverage?

What personal accounts are eligible for Standard Overdraft Coverage?

If I opt in or out, when does the change take effect?

Is there other important information I need to know about Regions Standard Overdraft Coverage?

Why is Standard Overdraft Coverage important to me?

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This coverage helps you avoid:

- the inconvenience and embarrassment of having a check returned and possibly incurring additional merchant fees,
- being declined at the ATM, or
- having your CheckCard transaction declined at the time of purchase, such as at a grocery store or restaurant or in the event of an emergency.

Are there other options besides Standard Overdraft Coverage?

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In addition to Standard Overdraft Coverage, Regions offers **Overdraft Protection**. This service allows you to have funds automatically transferred to your checking account from another Regions account, savings account, line of credit or credit card in the event of an overdraft. Please be aware that Regions Overdraft Protection is not the same as Standard Overdraft Coverage, and you must apply separately for Overdraft Protection.

Do I need Standard Overdraft Coverage if I already have Regions Overdraft Protection?

[\[back to top\]](#)

No. Standard Overdraft Coverage does not apply if you currently have Regions Overdraft Protection. If your Overdraft Protection plan is ever discontinued, you may opt in to Standard Overdraft Coverage for ATM and everyday CheckCard transactions.

How do the federal changes affect me ?

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Because of new federal regulations that went into effect August 13, our Standard Overdraft Coverage no longer covers everyday CheckCard or ATM transactions on your personal account unless you have specifically opted in to the coverage. Checks you write, automatic bill payments and other debit transactions are not impacted.

What are "everyday CheckCard transactions"?

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They're the daily purchases you make with your CheckCard. Examples include making a purchase at a store, restaurant, gas station, or online.

Ongoing preauthorized payments you've set up, such as paying a monthly gym membership or other automatic monthly CheckCard payments, **are not** considered everyday CheckCard transactions and are not impacted by the regulatory changes as long as the merchant has set them up as recurring payments.

What if I make a deposit to cover an overdraft?

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Your account may be overdrawn even if you think you have sufficient funds. At times you may have used Standard Overdraft Coverage and not even realized it. For instance, you may have used your CheckCard when funds from a recent deposit weren't available yet, or maybe you used your CheckCard before making a deposit later in the day. **If you are not opted in to Standard Overdraft Coverage** for your everyday CheckCard and ATM transactions, those transactions may be declined if you don't have sufficient funds in your account to cover them at the time of the transaction, even if you plan to make a deposit later that same business day.

Does the regulatory change affect other types of transactions, such as when I write a check?

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No. The change only affects your ATM and everyday CheckCard transactions. It doesn't affect transactions involving checks you write or recurring CheckCard transactions such as ongoing preauthorized payments you might set up using your card or other debits you have created using your account. Standard Overdraft Coverage may continue to cover these types of transactions should you overdraw your account.

What if I choose to continue Standard Overdraft Coverage for ATM and everyday CheckCard transactions but change my mind later?

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You can change your selection at any time – by calling us at 1-800-947-BANK (2265) or by visiting your Regions branch. If you are an Online Banking customer, you can also change your selection by logging in and selecting Overdraft Coverage Options from the Customer Service menu.

Do I have to make a selection regarding Overdraft Coverage on my business account?

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No, the regulatory changes only apply to your personal account. The Overdraft Coverage on your business account will not be affected.

What are the fees for overdrafts?

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We charge \$35 for each overdraft we pay on your behalf. However, we will not charge you more than four overdraft fees per day. If your account is overdrawn by \$5 or less when we perform end-of-day processing, you will not be charged an overdraft fee for that day. Our fees and fee policies are subject to change.

How do I opt in/out for Standard Overdraft Coverage for ATM and everyday CheckCard transactions?

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Opting in or out of Standard Overdraft Coverage is easy. Simply visit a branch, call 1-800-947-BANK (2265), or log in to Regions Online Banking and select Overdraft Coverage Options from the Customer Service menu.

What personal accounts are eligible for Standard Overdraft Coverage?[\[back to top\]](#)

Personal checking and money market accounts that are not currently set up with Overdraft Protection are eligible for Standard Overdraft Coverage.

If I opt in or out, when does the change take effect?[\[back to top\]](#)

Changes made prior to 6:00 PM CT on any business day will be effective for the following business night's processing.

Is there other important information I need to know about Regions Standard Overdraft Coverage?[\[back to top\]](#)

Overdraft fee is \$35 per item as of May 1, 2010, and subject to change. Fees may be imposed for any debit transaction that causes your account to be overdrawn, including by check, in-person or ATM withdrawal, CheckCard, or withdrawal/transfer by any other manual or electronic means.

We reserve the right to require you to pay any overdraft immediately or upon demand. We also reserve the right not to pay overdrafts. We typically do not pay overdrafts if your account is not in good standing, you are not making regular deposits, or you have too many overdrafts.

For more information, please refer to the disclosure titled "What You Need To Know About Overdrafts and Overdraft Fees." This can be found by visiting regions.com/coverage.



What You Should Know About Overdrafts

As a checking account customer you know how important it is to keep track of your balances to avoid the inconvenience and expense of overdrafts and the fees we charge you for them. Learn how to do so with our helpful information on how overdrafts work and how to avoid them.

Changes to Standard Overdraft Practices Coming Soon

There has been a lot of attention on overdrafts recently – and overdraft fees - especially fees caused by ATM or debit card overdrafts. Beginning this summer, you will have the ability to choose how you would like Citizens Bank to handle overdrafts created by your ATM and everyday debit card transactions. You can authorize us to allow and pay overdrafts that may happen when you use your ATM or debit card. (Allowing overdrafts is at our discretion, and we cannot guarantee that ATM or debit card transactions that overdraw your account will always be approved.) Or, if you do not want to be able to overdraw your account at the ATM or while making a purchase, you can choose not to opt in. See our [Guide to Standard Overdraft Practices](#) for more detailed information. If you want your account to continue to work as it does today without any interruption in service you will need to make a decision to opt in before August 15th.

Upcoming changes do not impact our Overdraft Protection Line of Credit or Savings Overdraft plan; they will continue to work as they do today.

As you consider whether to opt in, here is helpful information about overdrafts, and how to avoid them.

What is an overdraft?

An overdraft occurs – and an overdraft fee is charged to you – when a debit transaction (for example, a check drawn, ATM withdrawal or debit card purchase) exceeds the "available balance" in your account and Citizens Bank still approves the transaction.

What is an available balance?

The available balance is the amount of money in your account, minus any holds (such as, outstanding debit card authorizations (described below)) and uncollected funds as a result of our funds availability policy. It does not reflect checks you've written that have not yet cleared, pending online banking Bill Pay transactions, or pre-scheduled debits (such as, health club dues automatically debited from your account at a certain time each month).

How can I determine my available balance?

You can get your available balance any time at the ATM, by phone or online. But only **you** know how your available balance may be altered by checks you've written or online banking bill payments that haven't cleared yet.

Does my available balance fluctuate during the day?

Yes, it can. Your available balance is updated to reflect transactions you make during the day (such as, cash deposits, direct deposits, account transfers, withdrawals, and debit card purchases).

Can I overdraw my account at the ATM or with my debit card?

Yes, currently, financial institutions, at their discretion, may approve ATM or debit card transactions that result in an overdraft and the charge of an overdraft fee. Effective this summer, you will be able to choose how these transactions are handled. See [Changes to Standard Overdraft Practices Coming Soon](#)

What is an "outstanding debit card authorization"?

An "outstanding debit card authorization" is the amount deducted from your available balance while we await the final settlement request from the merchant. Keep in mind, this outstanding authorization amount may be larger, or smaller, than your actual purchase amount. So while we wait for the merchant's final settlement, a period that can last several days, your available balance is reduced by the amount of the authorization, not your actual purchase amount. In some cases when final settlement is delayed, the outstanding authorization is released, which causes your available balance to appear larger than you might otherwise expect.

What is a merchant's "final settlement request"?

It is an instruction from the merchant to the bank to deduct the exact amount of your final purchase. It follows after the debit card authorization request and completes the transaction.

When I make a purchase with a merchant, is that money taken out of my account immediately?

Yes, outstanding debit card authorizations for all debit card purchases are immediately removed from your available balance. The timing of when these transactions are actually processed depends on when the merchant sends their request for final settlement. While the majority of transactions are settled within one business day, the actual timing rests with the merchant and is out of Citizens Bank's control.

How and when are transactions deducted from my account?

At Citizens Bank, we do not process your transactions in the order that you make them or when we receive them. Rather, we post transactions from high-to-low, meaning that at the close of each day, we deduct your highest-dollar transactions first, before deducting your smaller dollar transactions. With this "posting order", you are at a lower risk of having an important item returned, such as a mortgage, rent or car loan payment. However, these larger items will cause your account balance to be used up faster, and, if it falls to zero, you will incur overdrafts or returned items and related fees. As a result, overdraft fees may be incurred more frequently than if we had deducted the transactions in a different order. Remember though, if the available balance in your account does not fall below zero this "posting order" does not matter.

Can an outstanding debit card authorization result in overdraft fees for me?

A merchant's outstanding debit card authorization request will alter the available balance in your account. If, as a consequence, your available balance falls below zero at day's end, then overdraft fees will be charged.

For example, a debit card authorization may lead to overdraft fees in certain circumstances:

- Customers who reuse the funds in their account, anticipating the delay between purchase and settlement, may experience an overdraft fee because the outstanding debit card authorization reduces the available balance in the account.

Example: Bill has a \$100 available balance and makes a \$75 debit card purchase. Bill assumes that he will still have the full balance available because the debit card purchase may take a day to appear on his account. In fact, his available balance will be immediately reduced by \$75, the amount of the outstanding debit card authorization. If he makes another purchase or withdrawal beyond the remaining available balance, it will result in an overdraft fee.

- If a merchant obtains an authorization for your debit card, but then your purchase is paid for by other means, the merchant must submit a reversing transaction to remove the debit card authorization. If they do not do this, the available balance will be reduced until the hold expires, normally two business days.

Example: Jane has \$250 in her account and uses her debit card to pay \$175 for theater tickets. She decides, after the card is swiped, to pay by cash but the theater operator does not reverse her debit card authorization. Because they did not reverse the transaction Jane's available balance is reduced by \$175. That night, a \$200 check that she had previously written posts to her account. As a result the account is overdrawn and a fee is charged.

- Some merchants request an authorization for \$1 just to ensure that the card is valid, but then submit the full amount of the purchase for settlement, which may overdraw your account.

Example: Chris, who has \$40 available in his account, stops at a gas station to fill up. When he swipes his debit card at the pump, the gas station sends a \$1 authorization request to the bank. Chris pumps \$75 dollars worth of gas into his SUV. When the debit card purchase settles, it overdraws his account and he is charged an overdraft fee.

Overdraft fees may be charged in these instances. But if the mistake is ever on our part, we will gladly refund your fees.

What happens when I swipe my debit card at a gas station?

When you use your card to purchase gas, the station will send a request for a debit card authorization. Keep in mind, this outstanding authorization amount may be larger, or smaller, than your actual purchase. This request is released within two hours of your transaction.

What happens when I swipe my debit card at a hotel or rental car agency upon checking in?

At check in, the merchant will send a debit card authorization request that may exceed the amount that you will eventually be billed. This authorization request reduces your available balance for no more than the business day that it was sent (i.e., if sent on Thursday, it will reduce your available balance until Thursday night; if sent on Saturday, it will reduce the available balance until Monday night).

Can I cover an overdraft and avoid fees?

If you overdraw your account during the day you can cover it and avoid overdraft fees by making a sufficient deposit that same day, or if the funds from a sufficient deposit made earlier become available. You will need to review our funds availability policy to determine which types of deposits are available the same day (such as cash deposits).

What happens if I do not bring my account back to positive status?

If your account remains overdrawn, several things will happen: You will be charged a “Sustained Overdraft fee”, which begins after the account has been overdrawn for three business days. (We encourage you to sign up for online banking alerts to know when your account is overdrawn.) Your account will also be forwarded to our collections department who will contact you to ensure that you are aware of the overdraft, and to discuss ways to bring the account positive. We may also transfer funds from your other accounts to cover the overdraft. Finally, if the account has not been brought back to positive within 60 calendar days, the account will be closed and you may be reported to ChexSystems, a national clearinghouse of check writing information. This may impair your ability to open a checking account elsewhere.

What are Sustained Overdraft fees?

A Sustained Overdraft fee is charged if the account’s overdrawn balance is not brought back to at least a zero balance within three business days. A daily sustained overdraft fee of \$6.99 will be charged if your account remains overdrawn for 3 through 12 consecutive business days. The sustained overdraft fee will be assessed on the 4th business day and each day thereafter up to and including the 13th business day.

How can I manage my account so I avoid these fees?

The simplest way to avoid overdrafts is to maintain an accurate and up-to-date check register. Be sure to record fees and regular account charges, such as a monthly maintenance fee. When transactions are recorded, don’t assume that they will not post to your account for several days; many merchants convert checks into electronic debits and charge your account immediately. See [Avoiding Overdraft Fees](#) for more information on how to protect your account from overdrafts.

Citizens Bank also offers several free tools to help you manage your account, including free online banking, with free alerts to warn you when your account balance dips below a certain level. You may also sign up for free email or text notification of an overdraft on your account. See [Online Banking Alerts](#) for more information on how to stay on top of your account balances.

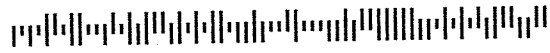
We’re here to help.

If you have any questions on our services and solutions to help you monitor your money more closely and save on fees, visit a Citizens Bank Banker today.

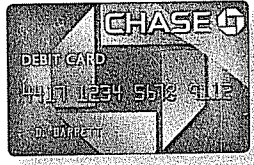
Thanks for banking with Citizens Bank.



Craig M. Shapiro
 3209 W Argyle St. Apt. 1N
 Chicago, IL 60625-4932



PLEASE READ CAREFULLY



HOW YOUR DEBIT CARD WORKS WILL CHANGE. UNLESS WE HEAR FROM YOU.

Dear Craig M. Shapiro,

Your Chase checking account has a feature called **Chase Debit Card Overdraft CoverageSM**. Soon, we can no longer provide this coverage automatically — if you want to keep it, you need to tell us.

WHAT IS IT?

- If you don't have sufficient available funds to make a purchase or pay for something unexpected, Chase Debit Card Overdraft Coverage may allow your everyday debit card transactions to be authorized, at our discretion. Fees may apply.
- Many deposits you make into your checking account are not immediately available for your use, so you cannot start using those dollars right away for everyday debit card purchases. Chase Debit Card Overdraft Coverage may provide options when you need them (approvals are subject to Chase's discretion).

HOW DOES IT WORK?

		WITH¹ Chase Debit Card Overdraft Coverage	WITHOUT¹ Chase Debit Card Overdraft Coverage
TUESDAY – Morning	--	AVAILABLE BALANCE: \$100	AVAILABLE BALANCE: \$100
TUESDAY – Noon	\$50 Lunch	APPROVED	APPROVED
TUESDAY – 2:00 pm	\$100 Groceries	APPROVED <i>(at Chase's discretion)</i>	DECLINED
IF YOU DON'T MAKE A DEPOSIT			
TUESDAY	No Deposit	OVERDRAFT FEE CHARGED	NO OVERDRAFT FEE CHARGED
HOWEVER, IF YOU DO MAKE A DEPOSIT			
TUESDAY – 4:00 pm	\$450 Deposit	NO OVERDRAFT FEE CHARGED	NO OVERDRAFT FEE CHARGED

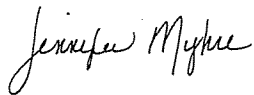
HOW MUCH DOES IT COST?

- Standard overdraft fees may apply, including a \$34 fee each time you use your debit card and don't have sufficient available funds at the end of the day. Please see the back of this letter for more details.
- No fee if you overdraw but make a deposit or transfer the same business day to cover your purchases.²
- No fee to keep Chase Debit Card Overdraft Coverage on your account, and no fee if you never use it.

PLEASE MAKE THE CHOICE THAT'S RIGHT FOR YOU.

If you don't have Chase Debit Card Overdraft Coverage — and you don't have sufficient available funds to cover a purchase — beginning August 15, 2010, your everyday debit card transactions will be denied. To determine if it's right for you, please call **1-866-532-4273**, talk to a banker at any Chase branch or visit chase.com/coverage today.

Sincerely,



Jennifer Myhre
 Senior Vice President

¹ This example assumes that you have no Chase Overdraft Protection, which may transfer funds automatically from your Chase savings account, credit card or home equity line of credit (except Texas residents) to cover your overdraft purchases. Overdraft Protection may be subject to credit approval. Standard fees may apply, including a \$10 transfer fee.
² This assumes that no deposit hold is placed on the deposit.

HELPFUL ANSWERS TO YOUR QUESTIONS

Q. If I have Chase Overdraft Protection linked to a savings account, credit card or home equity line of credit, do I still need this service?

A. Chase Overdraft Protection, which you may already have on your checking account, allows us to automatically transfer money from your Chase savings account, credit card or home equity line of credit if your checking account is overdrawn at the end of the business day. However, if you don't have sufficient funds available in your Overdraft Protection account to cover your transactions, your everyday debit card purchases will be denied. That's where Chase Debit Card Overdraft CoverageSM can help. It may allow your everyday debit card purchases to be approved, at Chase's discretion, if you're not signed up for Chase Overdraft Protection or if you are but don't have enough money or availability in your savings account, credit card or line of credit.

Q. If I sign up for Chase Debit Card Overdraft Coverage, will my debit card charges always go through?

A. No. Whether a transaction will be paid is discretionary, and we reserve the right not to pay. The amount of Chase Debit Card Overdraft Coverage will vary based on your account history, including your deposit and spending patterns.

Q. Are there fees?

A. Yes. You will pay a \$34 fee each time you use your debit card and don't have sufficient available funds at the end of the day. We will only charge you a maximum of 3 such fees per day. We will also charge you an additional one time fee of \$15 if your account remains overdrawn for 5 consecutive business days. There is no fee if you have Chase Debit Card Overdraft Coverage and don't use it. And in most cases, there is no fee if you overdraw your checking account with your debit card, but you make a deposit or transfer that same business day to cover the cost of your purchases.

Q. When do I need to make my deposit to avoid an overdraft fee?

A. You will have until the cut-off time (as posted at the branch or ATM) of the business day of your transaction to make your deposit. If your debit transactions occur on a non-business day, you will have until the cut-off time of the next business day.

Q. What about automatic debit card payments that I set up with a merchant?

A. Debit card purchases that are set up to bill automatically (like a gym membership) may continue to be authorized, at our discretion, even if you do not sign up for Chase Debit Card Overdraft Coverage. In particular, we may, at our discretion, authorize and pay a recurring debit card transaction that causes an overdraft and charge an insufficient funds/overdraft fee even if you do not maintain Chase Debit Card Overdraft Coverage on your account.

Q. If I do not sign up for Chase Debit Card Overdraft Coverage, when will you stop paying my everyday overdraft debit card items?

A. If you do not opt in to Chase Debit Card Overdraft Coverage or we do not receive a response from you, beginning 8/15/10, we will not authorize your everyday overdraft debit card purchases if you do not have sufficient funds available.

Q. What if I can't decide or don't want this service?

A. We're happy to help you understand your options for managing your account. Stop by any Chase branch and talk to a banker or visit chase.com/coverage. If you don't want your everyday debit card transactions authorized when you don't have sufficient available funds, your banker can remove this service from your account. But please try to talk with us before 8/15/10 to ensure that your debit card works the way you want it to.

Q. How do I prevent my child's account from being charged overdraft fees?

A. Our Chase High School CheckingSM accounts are not eligible for Chase Debit Card Overdraft Coverage and are not subject to overdraft fees for everyday debit purchases. Everyday debit card transactions will not be authorized when there are not sufficient available funds in the account or through Overdraft Protection.

Q. Are there alerts that can help me avoid fees?

A. Yes. You can get increased control over your account(s) and help prevent overdrafts before they happen! You can also move your money with your phone via text alerts to help avoid an overdraft. Stay one step ahead by activating your Instant Action Alerts at chase.com.

If you have already given us your decision regarding Chase Debit Card Overdraft Coverage or if you currently do not have a Chase Debit Card, please disregard this letter.

IMPORTANT DETAILS ABOUT CHASE DEBIT CARD OVERDRAFT COVERAGE

- We will charge an insufficient funds/overdraft fee of \$34 each time we pay an overdraft created by check, ACH, in-person withdrawal, debit card transaction or other electronic means. We will charge a returned item fee of \$34 for any check or ACH transaction that is returned because your account had insufficient funds. The most you would pay is three fees per day for insufficient funds or returned items, no matter the number of transactions.
- Also, each time your account is overdrawn for 5 consecutive business days, we will charge you an additional \$15.
- Once an overdraft has occurred, you are obligated to bring your account to a positive balance promptly.
- Whether your overdraft will be paid is at Chase's discretion, and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing or you are not making regular deposits or you have had excessive overdrafts.
- If you have sufficient funds available under Chase Overdraft Protection, funds will automatically be transferred from your Chase savings account, credit card or home equity line of credit (except Texas) to cover your overdraft purchases. Chase Overdraft Protection may be subject to a credit approval. Fees may apply, including a \$10 transfer fee.
- Whether you have Chase Debit Card Overdraft Coverage on your checking account will not affect how we treat your recurring debit card transactions (such as a gym membership). In particular, we may, at our discretion, authorize and pay a recurring debit card transaction that causes an overdraft and charge an insufficient funds/overdraft fee even if you do not maintain Chase Debit Card Overdraft Coverage on your account.



Chase Debit Card Overdraft CoverageSM

Chase Debit Card Overdraft Coverage on your personal checking account may allow your everyday debit card transactions to be approved, at Chase's discretion, before a deposit is available in your account and/or if you do not have sufficient available funds:

YES

I WANT CHASE TO AUTHORIZE AND PAY MY EVERYDAY DEBIT CARD TRANSACTIONS WHEN I DON'T HAVE AVAILABLE FUNDS

- My everyday debit card purchases may be approved, at Chase's discretion, if I do not have sufficient available funds.
- I'll have until the end of that business day to make a deposit or transfer to cover my approved everyday debit card purchases and avoid overdraft fees for these purchases.
- **If my account is overdrawn at the end of the business day, standard overdraft fees will apply.**

NO

I DO NOT WANT CHASE TO AUTHORIZE AND PAY MY EVERYDAY DEBIT CARD TRANSACTIONS WHEN I DON'T HAVE AVAILABLE FUNDS

- Deposits made today may not be available immediately, so I'll need to make deposits in advance to ensure everyday debit card purchases get approved.
- **Since everyday debit card purchases will be declined when there are not sufficient available funds, I won't be charged overdraft fees for everyday debit card transactions.**

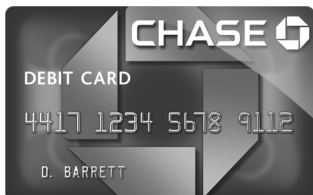
YOU DECIDE ABOUT TRIPLE PROTECTION TODAY!
Account Alerts + Overdraft Protection + Chase Debit Card Overdraft Coverage



* IMPORTANT DETAILS ABOUT CHASE DEBIT CARD OVERDRAFT COVERAGE

- We will charge an insufficient funds/overdraft fee of \$34 each time we pay an overdraft created by check, ACH, in-person withdrawal, debit card transaction or other electronic means. We will charge a returned item fee of \$34 for any check or ACH transaction that is returned because your account had insufficient funds. The most you would pay is three fees per day for insufficient funds or returned items, no matter the number of transactions.
- Also, each time your account is overdrawn for 5 consecutive business days, we will charge you an additional \$15.
- Once an overdraft has occurred, you are obligated to bring your account to a positive balance promptly.
- Whether your overdraft will be paid is at Chase's discretion, and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have had excessive overdrafts.
- If you have sufficient funds available under Chase Overdraft Protection, funds will automatically be transferred from your Chase savings account, credit card or home equity line of credit (except Texas) to cover your overdraft purchases. Chase Overdraft Protection may be subject to a credit approval. Fees may apply, including a \$10 Overdraft Protection transfer fee.
- Whether you have Chase Debit Card Overdraft Coverage on your checking account will not affect how we treat your recurring debit card transaction (such as a gym membership). In particular, we may, at our discretion, authorize and pay a recurring debit card transaction that causes an overdraft and charge an insufficient funds/overdraft fee even if you do not maintain Chase Debit Card Overdraft Coverage on your account.





Chase Debit Card Overdraft CoverageSM

Your Chase Checking account has a feature called **Chase Debit Card Overdraft Coverage**. Soon, we can no longer provide this coverage automatically — **if you want to keep it, you need to tell us**.

WHAT IS IT?

With Chase Debit Card Overdraft Coverage, we may approve everyday debit card transactions for you, at our discretion, when you don't have sufficient available funds.* This may include times when funds from your deposit are not available or when you cannot make a deposit until later that same business day. Fees may apply.

HOW DOES IT WORK?

- If you don't have sufficient available funds to make a purchase or pay for something unexpected, **Chase Debit Card Overdraft Coverage** may allow your everyday debit card transactions to be authorized at our discretion.
- Many deposits you make into your checking account are not available for your use immediately, so you cannot start using those dollars right away for everyday debit card purchases. **Chase Debit Card Overdraft Coverage** may provide options when you need them (approvals are subject to Chase's discretion).

HOW MUCH DOES IT COST?

- Standard overdraft fees may apply, including a \$34 fee each time you use your debit card and don't have sufficient available funds at the end of the day. See below and the next page for more details.
- No fee to keep **Chase Debit Card Overdraft Coverage** on your account.
- No fee if you overdraw, but make a deposit or transfer that same business day to cover your everyday debit card purchases.**
- No fee if you never use it.

IS CHASE DEBIT CARD OVERDRAFT COVERAGE RIGHT FOR YOU? TALK TO ONE OF OUR BANKERS TODAY.

To get informed about **Chase Debit Card Overdraft Coverage** and determine if it's right for you, talk to a banker at any Chase branch or call 1-866-532-4273. If you don't make a choice — **and you don't have sufficient available funds to cover a purchase — beginning August 15, 2010, your everyday debit card transactions will be denied.**

IMPORTANT DETAILS ABOUT CHASE DEBIT CARD OVERDRAFT COVERAGE

- We will charge an insufficient funds/overdraft fee of \$34 each time we pay an overdraft created by check, ACH, in-person withdrawal, debit card transaction or other electronic means. We will charge a returned item fee of \$34 for any check or ACH transaction that is returned because your account had insufficient funds. The most you would pay is three fees per day for insufficient funds or returned items, no matter the number of transactions.
- Also, each time your account is overdrawn for 5 consecutive business days, we will charge you an additional \$15.
- Once an overdraft has occurred, you are obligated to bring your account to a positive balance promptly.
- Whether your overdraft will be paid is at Chase's discretion, and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have had excessive overdrafts.
- If you have sufficient funds available under Chase Overdraft Protection, funds will automatically be transferred from your Chase savings account, credit card or home equity line of credit (except Texas residents) to cover your overdraft purchases. Chase Overdraft Protection may be subject to a credit approval. Fees may apply, including a \$10 transfer fee.
- Whether you have Chase Debit Card Overdraft Coverage on your checking account will not affect how we treat your recurring debit card transactions (such as a gym membership). In particular, we may, at our discretion, authorize and pay a recurring debit card transaction that causes an overdraft and charge an insufficient funds/overdraft fee even if you do not maintain Chase Debit Card Overdraft Coverage on your account.

Please see next page for additional terms and conditions

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HELPFUL ANSWERS TO YOUR QUESTIONS

Q. If I have Chase Overdraft Protection linked to a savings account, credit card or home equity line of credit, do I still need this service?

A. Chase Overdraft Protection, which you may already have on your checking account, allows us to automatically transfer money from your Chase savings account, credit card or home equity line of credit if your checking account is overdrawn at the end of the business day. However, if you don't have sufficient funds available in your Overdraft Protection account to cover your transactions, your everyday debit card purchases will be denied. That's where Chase Debit Card Overdraft CoverageSM can help. It may allow your everyday debit card purchases to be approved, at Chase's discretion, if you're not signed up for Chase Overdraft Protection or if you are but don't have enough money or availability in your savings account, credit card or line of credit.

Q. If I sign up for Chase Debit Card Overdraft Coverage, will my debit card charges always go through?

A. No. Whether a transaction will be paid is discretionary and we reserve the right not to pay. The amount of Chase Debit Card Overdraft Coverage will vary based on your account history, including your deposit and spending patterns.

Q. Are there fees?

A. Yes. You will pay a \$34 fee each time you use your debit card and don't have sufficient available funds at the end of the day. We will only charge you a maximum of 3 such fees per day. We will also charge you an additional one time fee of \$15 if your account remains overdrawn for 5 consecutive business days. There is no fee if you have Chase Debit Card Overdraft Coverage and don't use it. And in most cases, there is no fee if you overdraw your checking account with your debit card, but you make a deposit or transfer that same business day to cover the cost of your purchases.

Q. When do I need to make my deposit to avoid an overdraft fee?

A. You will have until the cut-off time (as posted at the branch or ATM) of the business day of your transaction to make your deposit. If your debit transactions occur on a non-business day, you will have until the cut-off time of the next business day.

Q. What about automatic debit card payments that I set up with a merchant?

A. Debit card purchases that are set up to bill automatically (like a gym membership) may continue to be authorized at our discretion even if you do not sign up for Chase Debit Card Overdraft Coverage. In particular, we may, at our discretion, authorize and pay a recurring debit card transaction that causes an overdraft and charge an insufficient funds/overdraft fee even if you do not maintain Chase Debit Card Overdraft Coverage on your account.

Q. If I do not sign up for Chase Debit Card Overdraft Coverage, when will you stop paying my everyday overdraft debit card items?

A. If you do not opt in to Chase Debit Card Overdraft Coverage or we do not receive a response from you, beginning 8/15/10 we will not authorize your everyday overdraft debit card purchases if you do not have sufficient funds available.

Q. What if I can't decide or don't want this service?

A. We're happy to help you understand your options for managing your account. Stop by any Chase branch and talk to a banker or visit chase.com/coverage. If you don't want your everyday debit card transactions authorized when you don't have sufficient available funds, your banker can remove this service from your account. But please try to talk with us before 8/15/10 to ensure that your debit card works the way you want it to.

Q. How do I prevent my child's account from being charged overdraft fees?

A. Our Chase High School CheckingSM accounts are not eligible for Chase Debit Card Overdraft Coverage and are not subject to overdraft fees for everyday debit purchases. Everyday debit card transactions will not be authorized when there are not sufficient available funds in the account or through overdraft protection.

Q. Are there alerts that can help me avoid fees?

A. YES. You can get increased control over your account(s) and help prevent overdrafts before they happen! You can also move your money with your phone via text alerts to help avoid an overdraft. Stay one step ahead by activating your Instant Action Alerts at chase.com.

* If you have sufficient funds available under Chase Overdraft Protection, funds will automatically be transferred from your Chase savings account, credit card or home equity line of credit (except Texas residents) to cover your overdraft purchases. Overdraft Protection may be subject to credit approval. Standard fees may apply, including a \$10 overdraft transfer fee.

** This assumes that no deposit hold is placed on the deposit.



IMPORTANT INFORMATION FOR CONSUMERS ABOUT YOUR CHASE CHECKING ACCOUNT

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 or credit card account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

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

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

- Checks and other transactions made using your checking account number
- Recurring debit card transactions

If we don't hear from you, effective August 15, 2010, we will not authorize and pay overdrafts for the following type of transaction unless you ask us to (see below):

- 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 Chase pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of \$34 each time we pay an overdraft.
- Also, each time your account is overdrawn for 5 consecutive business days, we will charge you an additional \$15.
- There is a 3 per day limit on the above \$34 fee we can charge you for overdrawing your account.
- For Basic Checking™ customers only, we will also charge you a monthly fee of \$10 if your account balance falls below zero during the month.

• **What if I want Chase to authorize and pay overdrafts on my everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on everyday debit card transactions, visit chase.com/coverage or stop by any Chase branch and talk to one of our bankers.



Important update regarding your Overdraft Coverage.



At U.S. Bank, we value our relationship with you. That's why we want to ensure you're aware of changes to ATM and Check Card Overdraft Coverage that went into effect August 15th. We recently sent you a letter explaining these changes and asked if you wanted to continue this coverage on your accounts. As of August 17th, we haven't heard from you. However, if you recently responded, there's nothing more you need to do.

We don't want your Overdraft Coverage to be interrupted while you make your choice. Therefore, we are pleased to extend your current Overdraft Coverage through December 31st, 2010 on the accounts listed above. We will continue to cover your ATM and everyday Check Card transactions at our discretion, and if an overdraft occurs, *we won't charge you an overdraft fee*. It's our way of showing we appreciate your business.

However, after December 31st, ATM and everyday Check Card transactions may be declined if your checking account has insufficient funds and your Overdraft Protection funds are depleted. So to best serve you, please tell us how you want us to manage your checking accounts regarding Overdraft Coverage.

If you say **YES**, your ATM and everyday Check Card transactions may be covered in the event of an overdraft, and you may incur applicable overdraft fees.

If you say **NO**, these transactions may be declined if your account lacks sufficient funds and you won't be charged a fee.

To let us know your choice:

- Go to usbank.com and log in to Internet Banking
- Call 800-US BANKS (872-2657) at the main menu, press 1, 6, then 5
- Visit your local U.S. Bank branch

Once we receive your response, your YES or NO choice will go into effect within three business days.

To get more details and watch a short video about Overdraft Coverage, go to usbank.com/choice. You can also call customer service or visit your local branch if you have any questions or need more information. Thank you for your business.

Sincerely,

Brent Farka
Vice President, Deposit Products

AFFIDAVIT OF RACHEL ROTHMAN

I, Rachel Rothman, depose and say as follows:

1. I entered TD Bank, located at 75 Federal Street, Boston, MA, 02110, on June 23, 2010, at 9:30a.m., in order to get information on the *TD Debit Card Advance* policies.
2. I first met with Head Teller Brenda Quintanilla. I told her I would like information about the bank's available checking accounts. Ms. Quintanilla told me that she could give me an overview of the accounts available, but that I would have to wait for the Store Manager, who was then busy with a customer, in order to open an account. Ms. Quinanilla could not open a new account herself.
3. Ms. Quinanilla gave me information about the Convenience Checking account. I asked her about the bank's overdraft fees and policies relating to the Debit Card Advance program. She printed out a copy of the personal fee schedule that listed the per transaction overdraft fee of \$35.
4. Ms. Quintanilla explained that in August, TD Bank has a new policy regarding the Debit Card Advance program, in which the customer must "opt-in" to the program. If a customer does not "opt-in," according to Ms. Quintanilla, then any debit card purchases, without available funds to cover the charge, will be declined. She told me that I did not have to "opt-in" right now, but I have the option to make that decision now or at any time after opening the account.
5. Then, I asked Ms. Quintanilla if there were any documents outlining the bank's "opt-in" procedure or any disclosures pertaining to this new policy. She told me that there was a packet which I would receive upon opening an account with the Store Manager, and the packet would contain the information I was looking for. I was under

the impression that she could not give me the packet herself. When it came time for Ms. Quintanilla to bring me over to the Store Manager, she did not give me the packet, but instead brought it over to the Store Manager.

6. Ms. Quintanilla then brought me over to the waiting area. A few moments later, Store Manager of TD Bank, Steve Belmarsh, invited me into his office so that I could open a checking account.

7. Mr. Belmarsh explained both the Convenience and Student Checking accounts to me. When I asked him about the overdraft fees, he told me that I should set up a savings account or a line of credit to avoid an advance fee of \$35. I told him I was not interested at this time in either of those options.

8. Then, Mr. Belmarsh explained that a new regulation was going into effect in August 2010, where a customer must either “opt-in” or “opt-out” of the Debit Card Advance program; customers are no longer automatically enrolled.

9. I told Mr. Belmarsh that I wanted to open a student checking account. We began the account set-up process. He asked me for my personal identifying information (i.e. name, address, social security, phone number). Mr. Belmarsh then asked me whether I was going to “opt-in” or “opt-out” of the Debit Card Advance program. I said I was not sure yet, and then asked Mr. Belmarsh if I could make a decision later. I stated that I wanted some time to think about which choice I would make. He told me that I must either “opt-in” or “opt-out” now, in order to open the account. Mr. Belmarsh was firm in his assertion that I had to make the decision right then. I was under the impression that his software would not allow him to proceed with opening my account unless he clicked on either an “opt-in” or “opt-out” field on the computer.

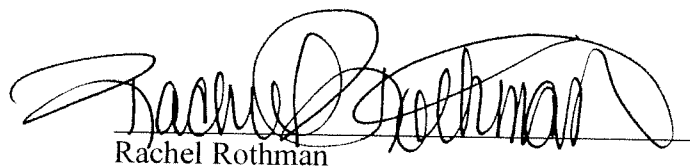
10. I decided to “opt-out,” at which point Mr. Belmarsh printed a copy of my “TD Debit Card Advance—Fully Opted Out” sheet. Then, I asked him if there were any disclosures regarding the “opt-in” or “opt-out” policies. He said my Fully Opted Out sheet was all he had.

11. Then, I asked Mr. Belmarsh if I decided to eventually “opt-in,” were there any policies or disclosures that explained how to make the change or what the change would mean to me as a potential new “opt-in” member. He told me that particular information was not covered in the new (printed Monday, June 21, 2010) “Personal Deposit Account Agreement,” but I could go online to www.tdbank.com/advance to make any changes.

12. I attempted to change my option on the website, but the site indicated that my personal information did not match their records.

I declare under the penalty of perjury under the laws of the Commonwealth of Massachusetts that the foregoing is true and correct.

Executed this 24th day of June 2010 at Boston, Massachusetts.


Rachel Rothman