Comments of the

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

Regarding
Notice of Proposed Rulemaking
Electronic Funds Transfer Act
(Overdraft Loans)

Federal Reserve System
12 CFR Part 205
Docket No. R-1343

March 30, 2009

These comments are submitted by the National Consumer Law Center, on behalf of its low income clients,[1] regarding the Federal Reserve Board's proposal to regulate overdraft loans under Regulation E, which implements the Electronic Funds Transfer Act. We appreciate that the Board has acknowledged the significant harms posed by overdraft loans, especially for debit card point of sale (POS) and ATM transactions. We urge the Board to adopt its "opt-in" proposal, which would require financial institutions to obtain the consumer's affirmative consent to overdraft coverage, in order to protect consumers from the fundamental unfairness associated with these high-cost small loans.

NCLC has joined the more extensive comments filed in this rulemaking submitted by the Center for Responsible Lending. Our separate comments focus on:

- The particular harms of overdrafts to vulnerable populations, such as our low-income clients.
- Why the Board should not exclude debit cards that access overdraft credit from the protections against unsolicited issuance in the Truth in Lending Act (TILA).

[1] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of sixteen practice treatises and annual supplements on consumer credit laws, including Truth In Lending, (6th ed. 2007) and Cost of Credit (3rd ed. 2005) as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low income people, conducted training for tens of thousands of legal services and private attorneys on the law and litigation strategies to deal predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of the all federal laws affecting consumer credit since the 1970s, and regularly provide comprehensive comments to the federal agencies on the regulations under these laws. These comments are written by Chi Chi Wu of NCLC.

- Why TILA disclosures are especially critical if consumers are being required to make a choice about overdraft coverage, to show the cost of using overdraft as credit compared to other credit sources.
- Why the Board should require an affirmative "opt-in" for check overdrafts.

I. The Impact of Overdrafts on Vulnerable Populations

As we note, NCLC has joined the excellent comments of the Center for Responsible Lending detailing why the opt-in proposal is far superior to the opt-out alternative, is more protective and beneficial for consumers, and accords with consumer preferences. We wish to elaborate why requiring opt-in is even more critical for certain vulnerable populations, such as low-income accountholders, low literacy consumers and those with mental disabilities.

A. Low-Income Consumers are Disproportionately Harmed By Current Overdraft Practices.

"A decent provision for the poor is the true test of civilization."
-Samuel Johnson

Over the last six years since the Board first began examining overdraft loans, statistic after statistic has overwhelming demonstrated that overdraft loans disproportionately harm low- and moderate-income consumers, the very populations least likely to be able to afford their steep costs. As early as 2003, a New York Times article reported that one banking consultant estimated that only four percent of consumers pay half of all overdraft fees.[2] That same article noted that a software vendor of overdraft programs "advise[d] banks to maximize the fees by opening branches 'in supermarkets, particularly supermarkets with a middle to down market and a family target market.'"[3]

In 2005, one banking analyst estimated that the poorest 20 percent of all accountholders pay 80 percent of all overdraft fees.[4] Litigation during the same period against overdraft providers uncovered similar evidence. Discovery in *Miller v. Bank of America* revealed that about 85% of all overdraft fees collected by Bank of America were incurred by accounts with average monthly balances of less than $1,000.[5] In 2004, a telephone survey conducted by the Consumer Federation of America found that moderate-income consumers with household incomes of $25,000 to $50,000 and African Americans were more like to overdraw their accounts.[6]

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[2] Alex Berenson, *Banks Encourage Overdrafts, Reaping Profit*, New York Times, Jan. 22, 2003 (citing an article on bankstocks.com and the estimate by Ralph Haberfeld).
[3] *Id.*
[4] Dean Foust, *Banks: "Protection" Racket?*, Business Week, May 2, 2005 (citing banking analyst call by Sanford C. Bernstein & Co.)).
[5] Amicus brief of the Center for Responsible Lending, Miller v. Bank of America, Civil No. A110137 (Cal Ct. App. Jan. 18 2006), available at http://www.responsiblelending.org/pdfs/Amicus-Miller_BofA-0106.pdf.
[6] Jean Ann Fox and Patrick Woodall, Consumer Federation of America, *Overdrawn: Consumers Face Hidden Overdraft Charges from Nation's Largest Banks*, June 2005.

Not one, but two, surveys from the Center for Responsible Lending, conducted in 2006 and 2008, found that 71 percent of overdraft fees were shouldered by only 16 percent of the respondents who incurred overdrafts, and those consumers were more likely to be lower income, non-white, single, and renters when compared to the general population.[7] Respondents reporting the most overdraft incidents were those earning below $50,000.[8]

Even the industry's own data reveals that low- and moderate-income consumers are disproportionately harmed by overdraft fees. A survey by the American Banker's Association, which that organization has frequently touted to defend bank's overdraft practices, that only four percent of those earning $50,000 or more paid at least ten fees in the last year, while 12 percent of those earning under $25,000 paid at least ten fees.[9]

The latest study from the Federal Deposit Insurance Corporation study confirms this disproportionate impact. The FDIC study clearly found that, for its supervisee-banks that had instituted overdraft loan programs, "lower-income groups were more likely to incur NSF charges than higher-income groups."[10]

> More than 38 percent of low-income accounts had at least one NSF transaction, compared with 22 percent of upper-income accounts. Lower-income customers were also more likely to have repeated overdraft transactions. Almost 14 percent of low-income customers had 10 or more NSF transactions, and 7.5 percent had more than 20 NSF transactions. Moderate-income customers had 11.5 percent of accounts with ten or more transactions. Customers in upper-income areas had just 7.1 percent of accounts with 10 or more NSF transactions, and less than 4 percent with 20 or more NSF transactions.[11]

The FDIC study also found that this small percentage of consumers who overdrew their accounts 20 or more times per year paid 68 percent of all overdraft fees.[12]

It is not just the financial burden of overdraft fees that harm low-income Americans. High fees, including overdraft fees, are a top reason cited by low-income consumers as to why they do not have (or no longer have) bank accounts.[13] Overdraft

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[7] Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, CRL Research
Brief (Apr. 16, 2008), at 2-3, *available at* http://www.responsiblelending.org/pdfs/final-caravan-survey-4-16-08.pdf.

[8] *Id*.

[9] ABA Survey, *80 Percent of Consumers Have Not Paid Overdraft Fee in Past Year, Says ABA Survey*, Aug. 29, 2007, *available at* http://www.aba.com/aba/documents/press/overdraftfeecharts_2007.pdf (last visited March 30, 2009).

[10] Federal Deposit Insurance Corporation, *FDIC Study of Bank Overdraft Programs*, November 2008, at 77.

[11] *Id.* at 81.

[12] Id at v.

[13] *See, e.g.*, Julia S. Cheney, Federal Reserve Bank of Philadelphia, *Payments, Credit, and Savings: The Experience for LMI Households* (May 21-22, 2007), at 11, *available at*

loans cause more and more of these consumers to fall into the ranks of the unbanked or the underbanked, burned by the high fees, mistrusting banks and paying too much of their hard earned money to check cashers and fringe providers.

As CRL's comments in August 2008 to the Board's Regulation AA overdraft proposal so compelling summarized, the behavioral economics research conclusively finds that the default option is the option that will realistically apply to most consumers.[14] Cass Sunstein, now head of the White House Office of Information and Regulatory Affairs, and Richard Thaler make that argument compellingly in their recent book, *Nudge*.[15] Even when government seeks to preserve freedom of choice, government should care what choices individuals make, and should structure default options to "nudge" them towards the correct choice. For overdraft loans, the best choices are (1) not to overdraw your account, and (2) to protect yourself from overdrafts by choosing a lower cost option than overdraft loans. The Board must establish the default option that nudges consumers to the best choices, to protect the hard earned dollars of the most financially vulnerable Americans.

B. Vulnerable Consumers Would Not Be Protected by an Opt-out Alternative.

The population with the greatest need for protections is also the population least likely to benefit from an opt-out notice. Many low-income consumers also have limited literacy and educational attainment.[16] These consumers will not benefit from being given a form that they must read, cognitively process, and then make a decision to actively opt out.

First, the consumer must be able to read. About 1 in 20 adults in the U.S. are non-literate in English, or about 11 million people. Overall, 14% of adults have below basic literacy skills.[17]

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http://www.philadelphiafed.org/payment-cards-center/events/conferences/2007/C2007MayExperienceforLMI.pdf (of the unbanked consumers in the 2005-2006 Detroit Area Study, 70 percent had previously had a bank account and the top reasons cited for closing the account included moving, high fees, and insufficient funds).

[14] Comments of the Center for Responsible Lending to Board of Governors of the Federal Reserve System, Office of Thrift Supervision and National Credit Union Administration on Proposed Rule Regarding Unfair and Deceptive Practices—Overdraft Practices (Aug. 4, 2008), *available at* http://www.responsiblelending.org/pdfs/overdraft-comments-udap-final-as-submitted-w-appendices-080408-2.pdf

[15] Richard Thaler & Cass Sunstein, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (Penguin 2008).

[16] For example, 82% of the adults who have Below Basic prose literacy skills have household incomes of less than $40,000. Sheida White, et al., National Center for Education Statistics, *Literacy in Everyday Life: Results from the 2003 National Assessment of Adult Literacy*, April 2007, at 32. (With two minor exceptions "[a]verage prose, document, and quantitative literacy was higher for adults in each increasing level of household income").

[17] *Id.* at 13.

Second, the consumer must make the effort to read the opt-out notice. Unfortunately, many consumers do not read notices. According to a recent study, 27% to 95% of consumers did not fully read consumers contracts that they were presented with for signature (the percentages varied by type of contract). Furthermore, this study found consumers with lower incomes and lower socio-economic status were less likely to fully read a contract.[18]

Finally, they must be able to comprehend the notice. Yet many consumers lack the ability to comprehend even straightforward and uncomplicated notices. One example of this inability is the failure of many consumers to derive information from FDA food nutrition labels, considered by many to be the gold standard. A study found that 40% of consumers were unable to derive simple information from the label such as "how many carbohydrates were in half a bagel" when the label stated information about the amount of carbohydrates for a whole bagel.[19]

As CRL's comments and reports have found, seniors are a population that is tremendously impacted by overdraft fees, including Social Security recipients who pay nearly $1 billion annually.[20]

Individuals with disabilities are another vulnerable population, including SSI recipients with mental disabilities and seniors with cognitive impairments. For example, in one of the first legal cases addressing overdraft loans – *Lopez v. Washington Mutual*[21] – two of the named plaintiffs had mental or psychological issues. Affidavits from that case discuss stories such as:

> Plaintiff LL was a mentally disabled man with bi-polar disorder who lived on Social Security Disability benefits of $752 per month. His benefits were direct deposited into his Washington Mutual account, with an overdraft limit of $900. One of the symptoms of his manic phase was compulsive spending. He overdrew his account twenty times in a one week period, and was assessed an $18 overdraft fee each time, including for a $3.23 purchase. The overdraft activity only stopped when LL was admitted into a psychiatric facility. During that time, WAMU simply took LL's Social Security Disability benefits for the next month, which left LL penniless when he was discharged from the psychiatric facility.[22]
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> Plaintiff B.B. was a physically and mentally disabled woman with severe depression after the death of her husband of 35 years. Her sole income was $898

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[18] Debra Pogrund Stark and Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities*, NYU Journal of Law & Business, at 29-30 (Spring 2009).
[19] Eric Nagourney, *Nutritional Information Leaves Many Uninformed*, New York Times, Sept. 26, 2006, at D6.
[20] Leslie Parrish and Peter Smith, *Shredded Security: Overdraft practices drain fees from older Americans*, Center for Responsible Lending (June 18, 2008), at 6, Table 1, *available at* http://www.responsiblelending.org/pdfs/shredded-security.pdf.
[21] 302 F.3d 900, *amended at*, 311 F.3d 928 (9th Cir. 2002).
[22] *See* Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment, Lopez v. Washington Mutual Bank, No. C99-20890 (N.D. Cal. December 8, 2000).

> per month in Social Security widow and disability benefits, which were direct deposited to her bank account at Washington Mutual. While B.B. was in the hospital for hip replacement surgery after a fall, her daughter used B.B.'s debit card as well as writing forged checks on B.B.'s account. Washington Mutual took one and a half months worth of B.B.'s Social Security benefits to pay for the overdrafts, including $450 in overdraft fees. As a result, B.B. was left with no money to pay her rent or food. She was evicted from her apartment and forced to rely on a neighbor for food.

Because of their disabilities, consumers like Mr. L.L. or Ms. B.B. often do not complain, file comments, or get media coverage, but they are the most vulnerable amongst us. As such, we have a greater societal responsibility to protect them.

Note that the federal government bears a special obligation to recipients of Social Security, SSI and veteran's benefits. In 1996, the passage of the law known as "EFT 99" (31 U.S.C. § 3332) resulted in a massive effort by federal agencies to ensure that all federal payments are electronically deposited into recipients' bank accounts rather than mailed. This government cost-saving measure, however, placed recipients directly in harm's way by making them subject to abusive overdraft loans.

The Department of Treasury recently recognized the danger that overdrafts can cause to recipients of Social Security, SSI and veteran's benefits. It insisted that overdrafts and overdraft fees be forbidden on the new Direct Express prepaid cards that it is now offering through Comerica Bank for unbanked recipients. Indeed, NCLC has recommended that, for some recipients, deposit of benefits to the Direct Express Card might be preferable to bank account direct deposit because of overdraft fees.[23]

Finally, one of the most frequently cited arguments defending bank overdraft practices is that consumers have the "personal responsibility" to keep track of their transactions and avoid overdrafts. First, this argument is hypocritical given that banks are deliberately permitting a debit POS or ATM transaction to overdraw an account when the transaction could be declined without charging a fee. More importantly for low-literacy consumers, this argument is completely unrealistic. Recent research compellingly documents that some low literacy consumers simply do not have the analytical skills necessary to determine their bank balances and avoid overdrafts:

> Being anchored in the perceptual "here and now" also interferes with the ability of low-literacy consumers to perform mathematical computations, especially those framed in abstract terms. For example, when we asked low-literacy shoppers in the U.S. to estimate whether they had enough cash to pay for the groceries in their cart, many needed to physically handle cash and envision additional piles of currency or coins to accurately estimate the cost of goods in their cart; when the sensorial experience of counting cash was taken away, they often were at a loss.

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[23] *See* National Consumer Law Center, *Consumer Concerns for Older Americans: Prepaid Debit Cards for Social Security and SSI Benefits*, at 5 (June 2008), *available at* http://www.nclc.org/issues/seniors_initiative/content/CC_Prepaid_Debit_Cards.pdf.

> Because handling cash while walking store aisles isn't advisable, many low-literacy consumers arrive at checkout counters not knowing whether they have enough money to cover their purchases. All too often, they hand all of their cash to the register attendant and hope for an honest transaction.[24]

Imagine how hard it would be for these same consumers to try to figure out if they will overdraw their accounts using a debit card to pay for their groceries (and imagine these same consumers trying to comprehend an opt out notice). The sad fact is that while low literacy consumers can usually rely on a supermarket cashier to make an honest transaction, these consumers cannot rely on their banks for the same honesty.

In the days when small transactions were paid in cash and bigger ones were paid by check, with the checkbook out and pen in hand, it was easier to keep track of one's bank account balance. But today, merchants and banks encourage credit or debit cards for every transaction big or small, offering miles, rewards, and speed at the checkout. Few today keep a running tally throughout the day of their checking account balance, and it is especially hard for vulnerable consumers to know that balance before every transaction.

II. **Overdrafts Should Not be Exempted from TILA Coverage**

A. Protections for Unsolicited Issuance and Error Resolution

The Board has proposed to exclude debit cards that access an overdraft loan from the protections against unsolicited issuance of a credit card under Regulation Z, 226.12(a). We strongly oppose this provision if institutions are not required to obtain the consumer's affirmative opt-in to overdraft loan programs.

Exempting overdraft loans from a requirement that the consumer actually asks for the product is especially outrageous because it is essentially involuntary credit. Overdrafts fit under TILA's definition of credit, because the ability to access overdrafts constitutes "the right … to incur debt and defer its payment."[25] When a bank permits a consumer to use the bank's funds to pay for an overdraft, and then requires the consumer to repay the bank, it is granting the right to incur a debt and defer its payment until the consumer's next deposit.

We can think of no other form of loan product in the United States that is imposed on consumers without their request. Every other form of credit product, from the most beneficial to the most abusive, requires the consumer to actively request or apply for the

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[24] Madhubalan Viswanathan, José Antonio Rosa, and Julie A. Ruth, *Emerging Lessons: For Multinational Companies, Understanding the Needs of Poorer Consumers Can Be Profitable and Socially Responsible*, Wall St. J. Online, October 20, 2008, http://online.wsj.com/article/SB122427233015845347.html (last visited March 30, 2009).
[25] 15 U.S.C. § 1602(e).

loan. This includes mortgages, credit cards, car loans, retail installment loans, payday loans, auto title pawns, and rent-to-own transactions.

Indeed, we can recall only one time that consumers were sent loan products without their affirmative opt-in – when creditors sent unsolicited credit cards to consumers in the 1960s. It was the outcry over this abusive practice that resulted in the very protection from which the Board now proposes to exempt debit cards tied to overdraft loans.

Congress responded to this outcry by amending TILA in 1970 to ban unsolicited credit cards.[26] According to the Senate report, nearly all new credit card accounts during a previous year had been started with unsolicited credit cards.[27] These cards had encouraged consumers to incur unmanageable debt and spurred bankruptcy filings.[28] The Senate report noted:

> many consumers find unsolicited credit offensive per se and an unwarranted intrusion into their personal life. The decision to use or not use a credit card is a personal one, and many consumers resent having a bank or other creditor try to make up their minds for them by sending an unsolicited credit card. Credit card issuers also intrude into family affairs by sending unsolicited credit cards directly to dependents, thus preempting the parent (or head of household's) right to decide whether the dependents are to have credit cards or not.[29]

Most parents of college students today can attest to the frustration at the overdraft charges that their children pay as young adults, unaccustomed to managing their finances, face the temptations of easy purchases with the swipe of a debit card.

Another common theme between unsolicited credit cards and unsolicited overdraft loans is the same "stickiness" of default options. When unsolicited credit cards were permitted, very few consumers opted out – only 1% returned the card. However, when prospective customers were asked whether they wanted to receive an unsolicited card, only 0.7% said they would.[30]

Thus, the same problems caused by unsolicited credit cards nearly 40 years ago hold true today for debit cards attached to unsolicited overdraft loans – they cause severe financial distress and represent an intrusion on the lives of consumers. The same prohibitions against unsolicited issuance are needed to prevent these problems, especially if the Board chooses the opt-out alternative. If the Board chooses the opt-in alternative, the opt-in could be treated as the consumer's request, which would bring the bank in compliance with 12 C.F.R. sec. 226.12(a).

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[26] Pub. L. No. 91-508, 84 Stat. 1126-27 (Oct. 26, 1970).
[27] S. Rep. No. 91-739, at 2 (1970).
[28] *Id.* at 2-3.
[29] *Id.* at 4
[30] Jack Metcalfe, *Who Needs Money*, New York Sunday News, Nov. 24, 1968, *reprinted in* 115 Cong. Rec. 1947, 1951 (Jan. 23, 1969).

B. Need for TILA Disclosures

As discussed above, overdrafts are clearly "credit" under the federal Truth in Lending Act (TILA). The fees for overdraft loans translate into APRs that are triple digit or even higher. For example, consider a $100 overdraft loan that is repaid in two weeks, for which the bank charges a $20 fee. A comparable payday loan would have to disclose an APR of 520%. Furthermore, most overdraft loans are paid much more quickly than two weeks - sometimes in a matter of days or hours - and sometimes the loan is only for a few dollars.

The ongoing failure of the Board to require TILA disclosures for overdraft loans undermines the statute's key purpose of strengthening "competition among the various financial institutions and other firms engaged in the extension of consumer credit." 15 U.S.C. § 1601(a). Without the uniform disclosure of the APR required by TILA, consumers have no way to compare overdraft loans to the cost of other similar credit transactions, such as payday loans, pawnbroker loans, auto title loans, overdraft lines of credit, and credit card cash advances. The disclosed APR for a typical payday loan is 391% to 443%[31] but for an overdraft loan program the lender may disclose under Regulation DD that the account is actually earning interest! Without apples to apples comparisons, there is no way to determine which product is cheaper or more expensive.

If consumers are going to be asked to make a choice about overdraft loans, banks must be required to make some sort of cost of credit disclosure. Consumers simply are unable to make an informed choice about either opt in or opt out based upon incomplete information. They will remain permanently in the dark about the exorbitant costs of using overdrafts as a source of credit, lacking the necessary information before they sign on the dotted line.

As noted above, Sunstein and Thaler's book *Nudge* argues that government should structure choices through "choice architecture" so as to prod individuals into making the right choice. The appropriate choice architecture in the case of overdraft loans involves (1) requiring consumers to "opt in" if they want overdraft loans, and (2) giving them proper comparison tools so that they can accurately choose the lower cost option – i.e., an overdraft line of credit or link to a credit card or savings account, rather than an overdraft loan.

Because the Board has eliminated the effective APR disclosure for open-end credit, a decision to which we have vehemently objected,[32] we recommend that the Board require a special APR disclosure for overdraft loans. This APR should be calculated as a closed-end APR, so that it will reflect the extremely short periods of time for which the

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[31] Keith Ernst, et al., *Quantifying the Economic Cost of Predatory Payday Lending*, Center for Responsible Lending (December 18, 2003), at 3.
[32] *See* Comments of the National Consumer Law Center, Center for Responsible Lending and other Consumer Groups Regarding Notice of Proposed Rulemaking Truth in Lending, Federal Reserve System, 12 CFR Part 226, Docket No. R-1286 at 52-57 (October 12, 2007).

overdraft credit is outstanding.[33] This overdraft APR would be included on any monthly statements in which an overdraft fee is assessed.

In addition, we recommend that sample APRs be provided to consumers when they are being asked to opt-in or opt out to an overdraft loan program. Since an institution cannot determine the APR of an overdraft fee before the fact because the term of the loan is not known, the Board should require a sample APR on the form, as follows:

"Examples of the annual percent rate (APR) for overdraft coverage:
-$[maximum fee the institution charges] for a $25 overdraft repaid in two weeks: x%
-$[maximum fee the institution charges] for a $10 overdraft repaid in two weeks: x%"

III. The Board Should Require Opt-in for Check Overdrafts

The Board appears to base its decision to limit the opt-in alternative, if selected, to only debit card and ATM transactions on consumer preference. The Board cites testing by Macro International to indicate that consumers want coverage of their check overdrafts. However, consumer preference should not entirely determine whether the Board requires opt in for check transactions. Just because consumers think they might want an expensive credit product, does not mean they should have it automatically.

First, the consumers in the Macro International testing expressed their preference in a vacuum, without consideration of other alternatives. They were not presented with lower cost options. More importantly, they were not presented with the critical information that this is an extremely high cost source of credit, which only TILA disclosures would provide.

Even if they did recognize that overdraft fees are expensive, a preference to have overdraft coverage is akin to wanting automatic access to a payday loans. Indeed, overdrafts are no more than payday loans provided by banks. Historically, abusive credit was denied to consumers even though many consumers want access to it, because of its harmful effects. While we are not asking the Board to ban this form of credit, we are asking that they be at least required to affirmatively seek it.

Finally, eliminating automatic overdraft coverage for checks will steer consumers into looking into their overdraft options other than overdraft loans. If given appropriate comparison tools such as an overdraft APR, many consumers who want overdraft coverage for checks will choose an option that is much less expensive than overdraft loans.

This outcome, like the “libertarian paternalism” urged by Sunstein and Thaler in *Nudge*, does not take options away from consumers. But it structures those choices to lead consumers towards the choice that is best for them.

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[33] This overdraft APR should be calculated as follows: The amount of the fee divided by the amount of the overdraft; divided by the number of days between when the overdraft occurred and when it was repaid; multiplied by 365 days; expressed as a percentage.

IV. **Conclusion**

We recognize and appreciate the efforts that the Board and the staff have made in examining and regulating overdraft loans. However, any meaningful regulation for overdraft loans must include the requirement that banks obtain the consumer's affirmative opt-in to overdraft coverage. Allowing consumers a real choice is a matter of fundamental fairness.

Overdraft loans probably represent the most important issue for deposit accounts in this country at this moment, especially for low and moderate income consumers. We urge the Board to "do the right thing" for the least financially well-off among us, and to help them to avoid overdrafts and to choose more appropriate overdraft protection that avoids expensive overdraft fees.