Comments of
National Consumer Law Center
(on behalf of its low income clients)
To
Department of the Treasury, Office of the Comptroller of the Currency (Attn: 1557-0081)
Federal Reserve System (Consolidated Reports of Condition and Income, FFIEC 031 & 041; OMB Number 7100-0036)
Federal Deposit Insurance Corp. (Consolidated Reports of Condition and Income, 3064-0052)
On
Proposed Agency Information Collection Activities (consumer deposits; bank fees; remittance transfers)
79 Fed. Reg. 2509 (Jan. 14, 2014)

Submitted March 3, 2014

On behalf of our low income clients, the National Consumer Law Center[1] submits these comments in response to the proposed Call Report requirement submitted by the Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB) and Federal Deposit Insurance Corp. (FDIC) to the Office of Management and Budget. In particular, we commend the OCC, FRB, and FDIC (collectively "Agencies") for their decision to move forward with their proposal to require institutions to report data on consumer deposit account balances; on service, overdraft and ATM fees; and on remittance transfers. This data is essential to the ability of the Agencies and other regulators to conduct their consumer protection and safety and soundness supervision.

We are especially supportive of the Agencies' decision to require reporting of data on overdraft, monthly maintenance, and ATM fees. However, we are disappointed that the reporting requirements have been revised to exclude institutions with less than $1 billion in total assets. We believe that overdependence on problematic fees is especially troubling and dangerous for smaller institutions.

[1] Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC publishes a series of consumer law treatises, including Consumer Banking and Payments Law. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. These comments were written by Lauren Saunders, Managing Attorney of NCLC's Washington, DC office and Chi Chi Wu.

I. Importance of Reporting Consumer Deposit Service Charges

Bank fees are often a sore spot for consumers. Some fees are merely the price of a product or of an optional service, and are not necessarily problematic as long as the fees are clearly and conspicuously disclosed and are simple enough to understand. But fees can also be a backhanded way of obscuring the price of a product and tricking consumers into paying much more than they understood or desired. Bank regulators can look out for problematic fee practices only if they have information about the fees that consumers are incurring.

Thus, we support the data collection requirements for financial institutions to specifically provide separate information on the three important categories of service charges: overdraft-related charges, monthly maintenance charges, and automated teller machine (ATM) charges. We agree that data on all three categories is important to both consumer protection and safety and soundness.

A. *Overdraft Fees*

Overdraft fee practices by many banks have become increasingly abusive over the last couple of decades. Overdrafts should never have become a predatory form of credit. Fee-based overdraft programs should only be used as an occasional courtesy to cover a mistake on an important payment, and not as a subversive way of tricking consumers into credit at the equivalent of triple- or even quadruple-digit APRs. While the 2010 Regulation E changes may have had some beneficial effect, responses by institutions have varied widely, and regulators simply must understand the extent to which banks are collecting significant overdraft fees from their consumer customers. Data on overdraft fees will help the Agencies and other regulators address abusive practices.

B. *Monthly Maintenance Fees*

Information on monthly maintenance charges is also important. There is nothing inherently wrong with a monthly bank account fee. Problems arise when the fee is either too high or too low. The squeeze on interchange fees and, to a lesser extent, overdraft fees has led many banks to increase their monthly charges or make those charges harder to avoid. For some consumers, higher fees may be driving them out of the banking system.

But on the other end of the spectrum, both banks and consumers have become overly reliant on the often false or unequal promise of "free checking." Checking accounts cost money, and they provide a service that consumers should be willing to pay for. But the competition to offer "free checking" and the allure of that promise has led to a situation where banks must recoup their costs in less transparent and more abusive back end fees. Back end fees also fall disproportionately on a small number of consumers, with the consumers who can least afford high fees subsidizing free checking for many others.

Understanding the maintenance fees that banks are charging consumers can help regulators assess whether the institution is engaged in the proper balance of fees that cover their costs and pricing practices that are not overly reliant on penalty fees. Regulators can also do their job better if they are able to identify successful strategies to cover the costs of accounts without either limiting access to those accounts or relying on back end fees.

C. *ATM Fees*

Finally, information on ATM fees is also important. ATMs are increasingly important to consumers' access to the banking system. But that access can come at a cost. That cost is especially difficult to bear for lower income consumers, including those reliant on public benefits, who often need to pay to access their scarce funds. The growth of the prepaid card market, with its different ATM pricing model, also has varying impacts on consumers' ability to access their funds. Information on the ATM fees that consumers are paying will help bank regulators play their role in supervising the banking system and ensuring that it works for consumers and banks alike.

II. Importance of Data for Safety and Soundness and Consumer Protection

Information about the fees that consumers are paying is important not only to consumer protection but also to reviewing the safety and soundness of a financial institution. Overdependence on one form of income can jeopardize the safety of a bank. This is especially true if the fees are problematic from a consumer protection point of view and may be the target of regulatory activity.

Addressing overdependence on problematic fees ensures both safety and soundness and consumer protection. Regulators should not be forced to choose between correcting consumer protection abuses and preserving income that a bank depends on. The data requested will enable bank regulators to identify and address overdependence on problematic fees.

The fact that banks make their fee schedules available to consumers and disclose their service charges does not change the fact that aggregate data is essential. For example, two banks can have identical overdraft fees, but one may engage in a number of complicated and subtle practices that push consumers into incurring overdraft fees, and the other may work to minimize overdraft fees and to help consumers find safer and less costly ways of covering shortfalls. Discrepancies in the amount of different categories of fees charged at different banks can help regulators identify problematic practices.

III. Reporting Fee Information is Even More Important for Smaller Institutions

Information about fee practices is even more critical in the regulation of smaller institutions. Many smaller banks are closer to the consumers they serve and less likely to engage in abusive practices than larger banks. But smaller banks can also be much more dependent on fee income and can get swept up in the desire to maximize those fees even when the fees harm consumers. Indeed, smaller banks, with the encouragement of third-party vendors, were some of the first to adopt aggressive automated overdraft programs and actively promote the ability of consumers to overdraw their accounts.

Questionable fees can be a disproportionate amount of a small bank's income. Regulators simply must identify overdependence on problematic fees by small banks in order to preserve the banks' safety and soundness.