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July 21, 2008

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

**Re: Document No. R-1314 [Overdraft Protection]**

Dear Ms. Johnson:

I am writing from Woodstock Institute, a Chicago-based research and policy development nonprofit organization, to request several changes to the Proposed Rule regulating overdraft loan programs associated with deposit accounts.

Woodstock Institute believes that the only effective method of eliminating unfair or deceptive practices related to this product is to require the consumer to affirmatively opt-in to the overdraft loan program offered by their financial institution. In this matter, the Proposed Rule provides insufficient protection and should be amended. In addition, while Woodstock Institute supports the proposal to prohibit overdraft loan charges to be levied on an account in cases where the account is overdrawn due to a debit hold, the Proposed Rule should be amended to include check holds.

Bounce protection, a product that is regularly offered to many bank customers as a convenience, has turned into an excessively priced loan program, key features of which are hidden from consumers. To illustrate the expense of this product, Woodstock Institute surveyed the top seven financial institutions in the Chicago region and compared the total cost of borrowing a \$200, 14-day loan made up of five separate transactions. With single overdraft fees averaging \$29 and APRs for this borrowing scenario exceeding 2,500 percent, it is no surprise that a \$200 loan ends up costing the average consumer \$186.<sup>1</sup> Nationwide, it is estimated that consumers spend \$18 billion per year to borrow approximately \$16 billion in loans.<sup>2</sup>

By applying the product to ATM, debit card, and other transactions, banks make overdrafts more likely and have dramatically increased the fees generated from consumers. Our experience has also shown that most consumers are not properly notified that they have been enrolled in a bounce protection program.

<sup>1</sup>Westrich, Tim, and Malcolm Bush. 2004. *Reinvestment Alert 26: Banking on Bounced Checks*. Chicago, IL: Woodstock Institute, October 12.

<sup>2</sup>Leslie Parrish and Peter Smith. 2007. *Billion Dollar Deal*. Center for Responsible Lending, Durham, NC: September 24. <http://www.responsiblelending.org/pdfs/billion-dollar-deal.pdf>.

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To address these issues, several recommendations for refined or expanded consumer protections which are not included in the Proposed Rule are listed below.

***Opt-in to, Rather Than Opt-out of Overdraft Loan Programs***

**Woodstock Institute believes that consumers should only be enrolled in an overdraft protection program if they have affirmatively opted-in.** The Proposed Rule would create an opt-out right for overdraft loan programs requiring financial institutions to provide consumers with notice and an opportunity to opt-out of the payment of overdrafts, once before an overdraft fee or charge is assessed and again during any statement period in which an overdraft fee is assessed. This is insufficient and the Proposed Rule should be modified to require consumers to opt in, rather than opt-out.

***Charges Should be Levied Only Due to Consumer Behavior, Not Processing Procedures***

**Woodstock Institute supports the proposal to prohibit overdraft loan charges to be levied on an account in cases where the account is overdrawn due to a debit hold but should be expanded to include check holds.** The Proposed Rule provides ample consumer protection from unfair and deceptive overdraft loan fees, but to prevent other unfair or deceptive fees as a result of processing procedures, rather than consumer behavior, the Proposed Rule should be amended to:

**Prohibit overdraft loan and bounced check (NSF) fees levied as a result of a check hold.** Consumers whose financial institutions choose to impose lengthy check hold times may still be subject to overdraft fees or bounced check fees as a result of this processing procedure. The rule should be amended to recognize that it is an unfair practice for a bank to charge an overdraft or bounced check fee for a problem caused by a processing procedure, such as holding on the consumer's check deposit, rather than consumer behavior.

While in many cases, we request that Board expand or refine the Proposed Rule, we commend the Board for its efforts to address many of the industry's unfair and deceptive practices related to overdraft loans. For those practices that may require Congressional action, we urge the Board to use its substantial influence to recommend such legislation to Congress.

Sincerely,



Tom Feltner  
Policy and Communications Director

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