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The Economics and Regulation of Bank Overdraft Protection

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Consumer use of bank overdraft protection has risen rapidly over the past decade. In 2010, 13 million consumers used overdraft protection, and banks generated $35 billion in revenue, an important and growing part of total bank revenue. Bank regulators have raised concerns about the increased use of overdraft protection by consumers and have issued regulatory guidance regarding the product under a safety and soundness rationale. In 2009, the Federal Reserve imposed new limits on overdraft protection that made it more difficult for banks to provide the service to consumers.[1] The Federal Deposit Insurance Corporation (FDIC)[2] and the Office of the Comptroller of the Currency have also issued guidance on overdraft protection and pricing.[3]

Public and political debate regarding overdraft protection has highlighted anecdotal stories about irresponsible college students who overdraw their accounts to buy a cup of coffee, thereby triggering substantial overdraft fees.[4] More important, although this subset of overdraft users might view the availability of overdraft as unnecessary or even a nuisance, for millions of others, overdraft can be a valuable tool to deal with short-term liquidity issues.

To date, regulation has been promulgated despite an almost complete lack of knowledge about consumer demand for overdraft protection and any rigorous analysis of safety and soundness or consumer protection questions. But this first look at consumer use of overdraft protection suggests that those who use overdraft protection generally do so because the real-world alternatives that are available are more expensive or less flexible and convenient than overdraft protection, especially when the full cost of alternatives is taken into account, including time, travel, and convenience.

While regulators have imposed regulations and proposed still further interventions, they have provided no tangible evidence of safety and soundness risk, consumer harm, or other market failure from overdraft protection. Most importantly, regulators have provided no evidence that curtailing access to overdraft protection would help those consumers intended to be assisted by the limitations.

This article explores the economics of overdraft usage by consumers and banks to understand the economic logic of the product. It then examines the recent regulatory initiatives by the Federal Reserve, FDIC, and OCC governing overdraft protection issued under the rubric of safety and soundness protection as well as purported consumer protection rationales that might prompt regulatory action by the CFPB. The case for regulation in this area under traditional safety and soundness is exceedingly weak, and the evidence of harm that would justify action under a consumer protection rationale, such as evidence of a lack of consumer understanding of the product's terms or prices, is nearly nonexistent.

There is no reason to believe that this regulatory-induced equilibrium outcome would be economically superior to that chosen voluntarily in a competitive market, especially once these other offsetting price and quality adjustments occur.

I. Overdraft Protection: Background

A. The History of Overdraft Protection

Traditionally, American consumers had three primary forms of payment available to them: cash, checks, and, more recently, credit cards. The advent and rapid spread of debit cards has added an additional payment system, one which has highlighted the question of overdraft fees because of the perception that debit cards and ATM machines are unusually prone to triggering "unfair" overdraft charges.

When using cash, a consumer bears no risk of overdrawing his account because he is limited to the cash he has on hand. Moreover, cash can only be used for face-to-face transactions and cannot be used to pay bills by mail. Accessing large amounts of cash, however, may arouse suspicion with law enforcement authorities. And while ATMs make it easier to obtain and use cash than in prior eras, there is still a substantial cost in terms of time and inconvenience from ATM visits.

Checks solve many of the problems inherent in cash transactions by enabling parties to transfer funds among themselves through bank drafts, rather than face-to-face transactions. But checks create problems of their own because the payment order is separated in time from the actual payment. Even if there were sufficient funds in the account at the time the check was written, there might not be at the time the check clears. This gives rise to the well-known danger that a check might "bounce" and be returned for insufficient funds.[5]

Bounced checks can be very costly to consumers. For example, a bounced check may lead to fees imposed by both the payee as well as the financial institution that may exceed $60 total per transaction, an implied APR far higher than for high-cost loans such as payday loans.[6] Bouncing a check is also very damaging to one's credit score, making subsequent access to credit even more difficult.

B. The Growth of Overdraft Protection Programs

Instead of bouncing checks, many banks have instead offered overdraft protection, in which a bank advances funds to clear the check so that it is not returned.

Over time, access to overdraft protection has grown as automated overdraft protection has reduced its cost and risk and increased its scale. The FDIC found in its 2006 survey of 1171 FDIC-supervised banks that 86% of banks "operated at least one formal overdraft program" and that 40.5% of all banks offered automated overdraft programs.[7] Among larger banks with over $1 billion in assets, 76.0% offered automated overdraft programs.

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Bank revenues from overdraft fees rose from $30 billion in 2005 to $37 billion in 2009 before slipping back to $35 billion in 2010 as a result of new Federal Reserve regulations that reduced the number of consumers using overdraft protection.[8] Overdraft fees constitute a substantial portion of bank revenues, and an even larger percentage for credit unions.[9] According to the FDIC's 2006 survey, overdraft fees on average represent 6% of total net operating revenues of FDIC-insured banks.[10]

This growth in the availability and usage of overdraft protection is consistent with consumer preferences. According to a 2009 survey by the American Bankers Association, of those consumers who had paid an overdraft fee in the past twelve months, 96% wanted the payment covered.[11] Therefore, the vast majority of overdraft customers self-report that they are happy that overdraft protection was available to cover their payments.

II. The Regulatory Framework

A. Federal Reserve Regulation

In 2009, the Federal Reserve promulgated amendments to Regulation E, governing electronic transfers, to place new regulations on overdraft fees.[12] Under those rules, consumers must affirmatively choose to opt-in to overdraft protection for ATM and point-of-sale debit transactions. The Federal Reserve's justification for its action was its conclusion, based on the responses of participants in a survey of just six people, that "participants generally indicated that they would want their checks paid into overdraft" but that the "majority of participants [four of six] also indicated that they would prefer an opt-in over an opt-out even if they would choose to have ATM and one-time debit card transactions paid."[13] Even if the responses of this six-person study are generalizable, however, the Fed made no determination of the relative cost of opt-in versus opt-out options on the system as a whole.

For example, one regional bank solicited opt-in for overdraft protection for debit card transactions from its largest overdraft users.[14] The bank sought permission from 499 customers that had 25 or more overdraft transactions in 2010. Of the 499 customers, 466 (93%) opted in for debit card transactions and 33 (7%) opted out.[15] This willingness of the heaviest users to opt-in to overdraft protection suggests that they value access to overdraft protection notwithstanding its seemingly high cumulative cost. Overall, 73% of the bank's customers chose to opt-in to debit card overdraft protection. Furthermore, market surveys have suggested similar results. According to a survey by Moebs, at various large banks 60%-80% of customers opted-in to debit card overdraft protection, with a median opt-in rate of 75%.[16]

As the analysts at Moebs Services put it, "The consumer no longer views overdrafts as a penalty like a parking ticket, but as a safety net."[17] Standard economic analysis provides a straightforward explanation for this observation: regular users of overdraft protection are those who are most likely to be aware of its costs and to choose to use overdraft protection because they believe it to be superior to their available alternatives.

B. FDIC Guidance

On November 24, 2010, the FDIC issued guidance regarding overdraft fees.[18] Under the FDIC guidance, financial institutions must take several steps regarding their overdraft accounts. Among its requirements, banks must "monitor [customer] accounts" and "take meaningful and effective action to limit use by customers" of overdraft protection. For example, the guidance provides that with respect to "excessive or chronic" users of overdraft protection—defined as those who overdraw their accounts on more than six occasions in a rolling twelve-month period—the bank must take affirmative steps to provide the customer with reasonable opportunity to choose a less costly alternative, such as linked savings account overdraft protection or a line of credit.[19]

C. OCC Guidance

In June 2011, the Office of the Comptroller of the Currency also issued proposed "Guidance on Deposit-Related Credit Products."[20] The OCC's guidance imposes several different requirements. First, it requires disclosure not only of the terms of the overdraft protection program offered but also of any alternative deposit-related credit products offered by the bank (such as tied savings protection). Second, the OCC rules urge banks to adopt an opt-in approach for all overdraft protection products, including checks, ACH, and recurring debit card transactions.[21] Third, the OCC guidance requires the bank to conduct sufficient analysis to ensure that the customer will be able to manage and repay the credit obligations arising from the product. Fourth, the OCC requires banks to adopt "prudent programmatic limitations" on the usage of overdraft protection in terms of the number of overdrafts and the total amount of fees that may be imposed per day and per month and any *de minimis* levels.

D. Rationales for Regulation

To date, regulation of overdraft protection has been grounded in purported safety and soundness concerns. Regulators have claimed that there is an undefined "reputation risk" from overdraft protection, a completely unsubstantiated assertion and hard to square with the market trend toward greater availability of overdraft protection for customers. Those who use overdraft protection most often—who regularly borrow and repay overdraft loans—provide the *smallest* safety and soundness risk, as they are the customers most likely to generate revenues from overdraft loans that exceed the costs or risk of loss to the bank. Thus, although safety and soundness regulation has focused on heavier users of overdraft protection as presenting particular risk, this focus is obviously nonsensical from a traditional safety and soundness perspective.

III. Consumer Protection and Overdraft Regulation

A. Who Uses Overdraft Protection?

The overwhelming majority of bank customers in the United States never use overdraft protection. According to the FDIC, in 2006, 75% of bank customers never overdrew their bank accounts and 12% overdrew only one to four times.

It is often asserted without evidence that overdraft protection is used predominantly by low-income consumers. A study by Moebs research firm, however, concludes that the only accurate predictor of the propensity to overdraft is credit score—those with lower credit scores are more likely to use overdraft protection.[22]

Thus, according to available research, the significant distinguishing feature of heavy overdraft users appears to be their credit score, not their income or other demographic status. After all, overdraft fees can be entirely avoided through responsible financial management: one regional bank found, for example, that 71% of its free checking accounts with average balances of less than $250 incurred no overdraft fees in the one year period between October 2009 and October 2010 (a total of 105,000 accounts).[23]

B. Why Consumers Use Overdraft Protection

Overdraft protection usually serves as a short-term source of small-dollar credit in order to meet a pressing need for funds and to prevent important payments such as utilities, rent, or other bills from being denied for insufficient funds. Moreover, those who use overdraft protection do so because it is better than available alternatives. For many, the closest real-world alternative to overdraft protection is payday lending. According to research by Moebs Services, about 19 million Americans use payday lenders and 13 million use overdraft protection every year.[24]

For most consumers, both payday lending and overdraft protection are fairly expensive compared to mainstream credit offerings such as credit cards.[25] This is to be expected: fundamentally it is and always has been the case that the cost of making small loans to consumers is high relative to the size of the loan. For example, even if a consumer could shop around and find a slightly lower rate for a payday loan than an overdraft loan, doing so would incur time and shoe leather costs of searching around, the risk of being rejected for the loan, etc. Many of these costs are incurred regardless of the size of the loan and thus are especially costly if the loan is small. Payday and overdraft loans share these fundamental economic characteristics that explain why their prices seem high. But payday loans and overdraft protection also differ in several significant ways. First, payday loans are less convenient and flexible than traditional overdraft loans. In fact, payday loans might not even be realistically available in some situations, such as when traveling or in an emergency. Overdraft protection, by contrast, is processed automatically and immediately, twenty-four hours a day, from anywhere in the world, and can be directly triggered by retail or online transactions.

Although payday loans often are less expensive than overdraft fees, this is not always the case. Leaving aside the benefits of overdraft protection in terms of convenience, privacy, and time and shoe-leather costs, there are important differences in the pricing scheme that are relevant to understanding consumer behavior. Payday loans typically charge $15 for every $100 borrowed. Overdraft loans, by contrast, typically charge a fee of $26-$35 *regardless* of the amount advanced. For loans to cover a single small expense of $100 or less, therefore, payday loans are typically less expensive than overdraft loans.[26] For loans of about $200, the price is about equal, and for loans of $300 or above, a single overdraft loan typically will be less expensive. This calculation will vary, of course, depending on whether the consumer is making one overdraft or more. But that is precisely the point—freedom of contract is most likely to be more efficient than regulation when consumer preferences are heterogeneous and knowledge of one's needs is highly personal.

A survey conducted by the Raddon Financial Group of customers of a large regional bank asked customers who used overdraft services where they would turn for emergency funds if they no longer had access to overdraft protection.[27] 53% of "elevated users" of overdraft protection reported that if overdraft protection was not available they would "[n]ot be able to get money," as opposed to only 16% of non-users.[28] Regular users of overdraft protection have low credit quality and limited credit alternatives.[29] According to the Raddon survey, for example, only 7% of elevated users of overdraft protection describe their personal assessment of their credit rating as "excellent," while 70% describe their credit rating as "fair" (38%) or "poor" (32%). By contrast, 74% of non-users of overdraft protection describe their credit rating as "excellent" or "good," and only 9% consider their credit rating to be "poor." Thus, reducing access to overdraft protection would simply exacerbate the plight of those who rely upon it because of a lack of better alternatives.

Fusaro and Ericson conclude that overdraft protection is generally welfare-improving for middle-class bank consumers and neutral for low-income consumers.[30] They conclude that eliminating overdraft protection "through excess regulation would hurt the most vulnerable population most, as they have the fewest alternatives to maintain necessary liquidity."[31]

C. Do Consumers Understand the Cost of Overdraft Protection?

Evidence that consumers generally trade off usage of overdraft protection and payday loans in a manner consistent with the predictions of economic theory also suggests that consumers are generally aware of the costs of overdraft protection compared to various alternative forms of credit and tend to use those which are most efficient in light of the limited options that are available to them.

The pricing of overdraft protection is simple and seemingly transparent. As can be readily seen in the "Overdraft Courtesy Customer Disclosure" form, the costs of overdraft protection are clearly disclosed and easily understood, and the criteria for available line of credit are plain (such as whether one has an overdraft account linked to a direct deposit account or not). The fees are clear: $29 per overdraft, up to a maximum of six charged overdrafts per day, and an 18% APR for any overdraft loan. The bank will not charge any overdraft fees for *de minimis* balances of less than $3. The bank also clearly discloses its clearing order from highest to lowest for various types of charges.

Research on payday loans also confirms that payday-loan customers are generally aware of the cost of payday loans. According to Elliehausen, only two percent of payday-loan customers reported that they did not know the finance charge for their most recent new payday loan; 94.5 percent reported finance charges consistent with prevailing market prices.[32]

IV. Overdraft Protection and Free Checking

A. Overdraft Protection and the Economics of Retail Banking

The expansion in the availability of overdraft protection has also helped to transform the consumer banking system over the past decade, especially by spurring rapid growth in the availability of free checking and other bank services,

increased innovation, and expanding access to bank services for previously-excluded consumers. The link between overdraft fees and free checking is a tight one: overdraft protection is essential for free checking to exist for low-balance consumers. Low-balance customers have little margin for error in managing their affairs—absent overdraft protection, these consumers might bounce checks and other payments with great regularity. For low-income consumers, overdraft protection essentially serves as a substitute for higher required minimum balances or other fees that would be necessary to cover the cost and risk of serving these customers. Overdraft protection, which provides a line of credit to insure payment of obligations after the fact, is a substitute for requiring higher precautionary balances as insurance ahead of time that payments will be honored.

Although banks began mainstreaming free checking in the late-1990s, between 2001 and 2009 the percentage of accounts at large banks that qualified for free checking rose dramatically from 7.5% to 76%.[33] This growth in access to free checking appears to have arisen from two sources: the simultaneous growth in the availability of overdraft protection and the rapid increase in the use of debit cards and the interchange fee revenues that they generate.

The reduction in the availability of free checking in the immediate period after the Federal Reserve's amendments to Regulation E took effect illustrates the competitive nature of the market. According to Evans, Litan, and Schmalensee, "within days" of the Fed's announcement of its new rules, banks starting scaling back access to free checking, imposing new fees, and eliminating services for consumers. The number of accounts eligible for free checking fell eleven percentage points—from 76% in 2009 to 65% in 2010—a figure that translates to approximately 20 million accounts.[34]

Consumers have tended to migrate to banks that offer overdraft protection (and thus lower required monthly fees), which has increased the market share of those banks and put pressure on competitors to respond.[35] Moreover, an obvious but often-ignored point is that consumers can easily avoid paying overdraft fees simply by not spending more money than they have in their account and by better financial management or larger precautionary balances.

B. The "Fairness" of Overdraft Fees

Critics of overdraft protection might argue that even though there are no demonstrable economic rents generated by overdraft fees, overdraft fees should nonetheless be regulated because they are "unfair." "Fairness," of course, is an entirely subjective and arbitrary concept. To the extent that the term has any meaning in this context, it appears to express a concern that the actual operation of overdraft fees results in a cross-subsidization of some consumers by others, as the minority of bank customers who pay overdraft fees sustain the system and provision of free services, innovation, and expanded service for the larger number of those who do not.

Today, banks offer a wide variety of services (many of them provided for free), but all of those are funded by a relatively small number of revenue streams. For example, some consumers physically go into branches to conduct transactions, thereby using the rent, heat, and employee time that others do not. Yet no banks of which we are aware charge a fee for those who use a teller window, even though those who do not use tellers are forced to subsidize those who do. Nor have bank regulators sought to prohibit this "unfair" cross-subsidization of those who use tellers. Banks offer all of these "free" services as a bundle—debit cards, tellers, heat, free parking, drive-through windows, online banking, and myriad other services—even though they result in cross-subsidies because of competition and customer demand. There is simply no sound policy justification for the arbitrary assertion that the only appropriate pricing scheme for banking services is one that is *a la carte* and that bundling services or cross-subsidizing consumers as competitive circumstances demand is a fundamentally flawed pricing scheme.

Replacing the outcomes of market competition and consumer free choice with those preferred by bureaucratic design of prices and products will reverse all of these beneficial trends. Regulatory policies that result in the elimination of free checking and the imposition of higher fees will drive many consumers out of mainstream financial services and force them to rely on alternative financial products, such as check cashers, prepaid card issuers, and rent-to-own companies. Yet this is the predictable unintended consequence of the cascade of government regulation since the financial crisis. Fewer customers are now eligible for free checking, new fees have been imposed on existing services, quality and convenience have declined, and banks have begun closing branches. It is hard to see how these trends will benefit consumers.

V. Competition and Overdraft Protection

If overdraft fees were simply a novel tool for banks to rip off consumers, then the growth of revenue from overdraft protection would be correlated with an increase in banks' bottom line profitability overall. But, in fact, there is no evidence that risk-adjusted bank profitability has increased substantially during the period that overdraft protection has spread and overdraft revenues have risen. Instead, profitability of depository institutions has remained relatively constant over time, even though overdraft revenues have risen substantially. This absence of any systematic evidence of major economic profits linked to the provision of overdraft protection suggests that the increased use of overdraft fees has been driven by the competitive need to meet growing consumer demand, not oppressive or unfair behavior by banks.

Further evidence that overdraft protection does not generate economic rents is the rapid spread of the product and general satisfaction of those who use overdraft protection regularly. The banking industry is highly competitive.[36] This high degree of competition suggests that if any economic profits are earned from overdraft protection they are dissipated in the competitive process of extending banking services to more consumers or reducing other banking fees, such as monthly account maintenance fees. Circumstantial evidence is provided by the absence of economic rents in the payday lending industry once risk and cost are considered[37] and the beneficial effect of competition on payday loan prices.[38]

Finally, the cost of retail banking has risen during the past decade as banks have increased the quality of bank services

through innovation and expanded services, thereby competing away increased revenues from overdraft protection and debit card fees. Of course, the opposite is true as well: if revenues from these are forcibly reduced, then banks will be forced to cut costs and services, closing branches and charging for services that were formerly free.

VI. Unintended Effects of Regulation of Overdraft Protection

Regulation of the terms of overdraft loans may also have negative unintended consequences. As noted, the Federal Reserve's amendments to Regulation E, which adopted an opt-in regime for debit card overdraft protection, had the severe effect of reversing a decade-long increase in the percentage of free checking accounts at banks, and subsequent regulation has accelerated this trend.[39] Moreover, most of the regulations are patently absurd from a safety and soundness perspective: banking regulators have singled out for special concern the most profitable customers and terms of overdraft protection products without any empirical evidence or even plausible economic theory about how reducing revenues could improve safety and soundness.[40] In fact, most of these purported safety and soundness concerns are actually consumer protection concerns in disguise. An awareness of the incoherent nature of the safety and soundness concerns expressed by bank regulators may explain the tentative nature of many of these regulations.

A. Regulating the Posting Order of Transactions

The FDIC guidance requires that banks not process transactions in a manner designed to maximize overdraft fees. As an example, the FDIC has suggested clearing items in the order received or by check number. Although the formal guidance does not speak further to the issue, the FDIC has stated that the practice of many banks of re-ordering transactions to clear payments from the largest to smallest value items is impermissible under the FDIC's guidance because this will "tend to increase the number of overdraft fees."[41]

Although it is plausible that requiring smaller payments to be posted first will reduce the total amount of overdraft fees, the FDIC's narrow focus on minimizing the total *cost* of overdraft protection ignores the potential *benefit* of overdraft protection to consumers. Requiring clearance from lowest to highest dollar value is contrary to the practice of many institutions, which has been to clear larger items first—usually checks and ACH payments—under the assumption that larger items tend to be more important items such as payments for mortgage, rent, utilities, or other high-priority payments that consumers would want to be sure would be paid. Although a requirement that smaller payments be cleared first would likely reduce the cost of overdraft fees, it ignores that the *benefit* of paying larger items is usually greater because the consequences of dishonoring larger payments are more severe. In fact, a report by the Raddon Financial Group of one bank's overdraft program found that 58% of its customers preferred that larger items be posted *first*, even though that might result in more overdraft charges in total.[42] Among "elevated users" of overdraft protection, the percentage preferring larger items to be posted first rose to 60%. Thus, the FDIC guidance contradicts the expressed preferences of a majority of the bank's customers, especially those who use overdraft protection most frequently, making consumers worse off.

VII. Conclusion

Regulation by anecdote is always dangerous, and regulation of overdraft protection based on unrepresentative anecdote presents the risk of injuring consumers and the safety and soundness of the banking system. Safety and soundness regulators are targeting those borrowers who provide no safety and soundness risk (regular users who generate a net profit for banks). Moreover, it is these very same heavy users who report that they are the least likely to have easy, low-cost alternatives to overdraft protection and thus are the most likely to be diligent in maintaining their access to overdraft loans in good standing. Lacking any identifiable safety and soundness threat or identifiable market failure or evidence of consumer ignorance, regulation can be supported by only bald paternalism. And as the lessons of history indicate, paternalistic regulation of consumer credit products tends to injure precisely those it is intended to help, by driving them to use less-preferred credit or reducing their access to credit generally, with all of the ancillary consequences.

The Federal Reserve's amendments to Regulation E implemented last year dealt a major blow to the availability and usefulness of overdraft protection for many consumers. The FDIC's regulatory guidance threatens overdraft protection further; the OCC has raised concerns in its guidance as well. Undoubtedly, some consumers misuse overdraft protection. But as recent years have amply demonstrated, every type of consumer credit is potentially subject to misuse—even traditional mortgages. For millions of consumers, overdraft protection provides a short-term lifeline that enables them to avoid more expensive problems, such as bounced checks, eviction, late fees on credit cards, or utility shutoffs.

Regulators cannot wish away consumers' need for credit, and eliminating access to overdraft protection will not correspondingly eliminate this need. History teaches the hard but undeniable lesson that well-intentioned paternalistic regulations that make it more difficult for consumers to obtain certain products cannot magically make them more financially responsible or make other less-expensive products magically appear. Everyone makes errors when it comes to many things, including personal finances. Yet it remains the case that most of us most of the time know better than central planners what is right for ourselves and our families. Access to overdraft protection is no exception. According to the Raddon survey, 94% of one bank's customers reported that use of overdraft protection should be their personal choice (including 92% of non-users and 96% of elevated users), and 89% reported their view that government should have *no* voice in how many overdrafts are allowed on one's account.[43] Government intervention into a competitive market is typically justified only by demonstrable evidence of a market failure and confidence that interventions will ameliorate, not exacerbate, market failures. To date, such evidence is lacking for overdraft protection.

Endnotes

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12 12 C.F.R. §205.17 (Nov. 17, 2009).

13 Regulation E, *supra* note 1, at 59,036.

14 Data on file with author.

15 Information provided by International Bancshares Corporation to author.

16 *Overdrafts Pile Up*, *supra* note 8.

17 Press Release, Moebs Services, Banks Lower Overdraft Fees as Consumers Choose to Opt-In (Dec. 8, 2010), *available at* http://www.moebs.com/PressReleases/tabid/58/ctl/Details/mid/380/ItemID/197/Default.aspx.

18 Overdraft Payment Programs, *supra* note 2.

19 Since the initial announcement of the guidance, the FDIC has clarified that this requirement can be satisfied by a statement on a customer's monthly statement. *See* FDIC Overdraft Payment Program Supervisory Guidance, Frequently Asked Questions, http://www.fdic.gov/news/conferences/overdraft/FAQ.html (last visited Jan. 27, 2012). Research suggests that this simple statement may be sufficient to persuade consumers to avoid use of overdraft fees by raising the salience of the issue even if it does not directly lead to a shift to substitute products. *See* Victor Stango & Jonathan Zinman, *Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Bank Overdraft Fees* (Nat'l Bureau of Econ. Research, Working Paper No. w17028, 2011).

20 Office of the Comptroller, Guidance, *supra* note 3.

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31 *Id.*

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34 *See* Evans, Litans, & Schmalensee, *supra* note 33.

35 Marc Anthony Fusaro, Consumers' Bank Choice and Overdraft Volume: An Empirical Study of Bounce Protection Programs (Working Paper, 2003).

36 Evans, Litan, & Schmalensee, *supra* note 33.

37 *See* Paige Skiba & Jeremy Tobacman, The Profitability of Payday Loans (Working Paper, 2006).

38 Donald P. Morgan, Defining and Detecting Predatory Lending (Fed. Res. Bank of New York, Staff Report No. 273, 2007); Robert DeYoung & Ronnie J. Phillips, Payday Loan Pricing (Fed. Res. Bank of Kansas City, Working Paper No. 09-07, 2009); *see also* Philip Bond, David K. Musto, & Bilge Yilmaz, Predatory Lending in a Rational World (Fed. Res. Bank of Philadelphia, Working Paper No. 06-2, 2006).

39 *See* discussion at *supra* note 33, and accompanying text.

40 Note the obvious point which actually must be stated in this context: simply because a customer or term is highly profitable (and thus beneficial from a safety and soundness perspective) does not mean that it is adverse to the interests of consumers. Profits in a free market economy generally are earned by providing a service that consumers desire and value.

41 *See* FDIC Overdraft Payment Program Supervisory Guidance Frequently Asked Questions, No. III.4, *supra* note 19. According to a 2009 survey, approximately 20 percent of financial institutions reportedly used the practice of clearing transactions from larger to smaller obligations. Moebs Services, Consumer Overdraft Fees, *supra* note 24.

42 Raddon Survey, *supra* note 27.

43 *Id.*