

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:09-02036-JLK

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

THIS DOCUMENT RELATES TO:

Swift v. BancorpSouth, Inc.
N.D. FL Case No. 1:10-cv-00090-SPM
S.D. FL Case No. 1:10-cv-23872-JLK

SECOND AMENDED COMPLAINT

Plaintiff, Shane Swift, through undersigned counsel, on behalf of himself and all persons similarly situated, alleges the following based on personal knowledge as to allegations regarding the Plaintiff and on information and belief as to other allegations.

INTRODUCTION

1. This is a civil action seeking monetary damages, restitution, and declaratory relief from Defendant, BancorpSouth Bank (“BancorpSouth” or the “Bank”), arising from its unfair and unconscionable assessment and collection of excessive overdraft fees.

2. In the era of electronic banking and the ubiquitous use of debit card transactions, the assessment of overdraft fees has become a major profit center for many United States banks, including BancorpSouth. For years, banks covered customers who occasionally bounced checks and even did so for a time for customers using debit cards, without charging their customers. Since the early 1990’s, however, banks have devised methods to provide

overdraft “protection” for customers and charge them in each instance. A recent FDIC report estimated that overdraft fees represent 74 percent of the total service charges that are imposed on deposit accounts in the United States. A 2008 FDIC study reports that overdraft fees for debit cards can carry an effective annualized interest rate that *exceeds 3,500 percent*. Nevertheless, the Consumer Federation of America reports that five of the ten largest banks raised their overdraft fees in the last year.

3. In 2007, banks collected more than \$17 billion in overdraft fees. That number nearly doubled in 2008, as more and more consumers struggled to maintain positive checking account balances. *In 2009, banks brought in \$37.1 billion in overdraft charges alone.* Operating over 300 commercial banking locations in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas, BancorpSouth benefits greatly from these staggering charges.

4. Almost by definition, these fees disproportionately affect the poor, who are most likely to maintain low balances. Moebs Services, a research company that has conducted studies for the government as well as banks, estimates that 90 percent of overdraft fees are paid by the poorest 10 percent of banks’ customer base. Moreover, these fees have the tendency to create a domino effect, because the imposition of a service charge on an account with a negative balance will make it less likely that the account holder’s balance will reach positive territory, resulting in more fees.

5. Before debit cards existed, banks occasionally extended the courtesy of honoring paper checks written on overdrawn or otherwise deficient accounts for customers who were typically in good standing. Banks extended this courtesy largely because the third party involved in a sales transaction allowed the customer to pay by check, expecting the funds to be available and the check to clear. For example, if a customer wrote a check to purchase groceries,

the grocery store would only know whether the check cleared *after* the groceries had been purchased.

6. The same considerations are not present when customers use debit cards. Banks could simply decline to honor debit or point of sale transactions where accounts lack sufficient funds to execute the transactions. Retail and service transactions could still be executed if consumers presented an alternative form of payment. ATM transactions could still proceed if banks provided a warning that an overdraft fee would be assessed, and customers chose to proceed nevertheless. In fact, until a few years ago, most banks simply declined debit transactions that would overdraw an account.

7. Instead of simply declining debit transactions when there are insufficient funds, or warning its customers that an overdraft fee will be assessed if they proceed with the transaction, BancorpSouth routinely processes such transactions and then charges its customers an overdraft fee of \$32 – even when the transaction is for only a few dollars. This automatic, fee-based overdraft scheme is intentionally designed to maximize overdraft fee revenue for BancorpSouth. Additionally, as part of its inequitable motive to generate obscene profits gained through the imposition of unconscionable overdraft fees, BancorpSouth failed to adequately disclose to its customers that they could elect to opt out of overdraft protection.

8. In many instances, these overdraft fees cost BancorpSouth account holders hundreds of dollars in a matter of days, or even hours, when they may be overdrawn by only a few dollars. Even more egregious, customer accounts may not actually be overdrawn at the time the overdraft fees are charged, or at the time of the debit transaction.

9. Thus, it is through manipulation and alteration of customers' transaction records that BancorpSouth maximizes overdraft penalties imposed on customers.

JURISDICTION AND VENUE

10. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the aggregate claims of the putative Class members exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed classes is a resident of a different state than BancorpSouth.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1407(a). Venue was proper in the Northern District of Florida, the district in which Plaintiff's action was originally filed, pursuant to 28 U.S.C. § 1391 because BancorpSouth is subject to personal jurisdiction there and regularly conducts business in that district, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred and continue to occur in that district.

THE PARTIES

12. Plaintiff, Shane Swift, is a resident of the State of Arkansas.

13. BancorpSouth is a state chartered bank incorporated in the State of Mississippi and maintains its principal place of business in Tulepo, Mississippi. Among other things, BancorpSouth is engaged in the business of providing retail banking services to tens of thousands of consumers, including Plaintiff and members of the putative Classes, which include the issuance of debit cards for use by its customers in conjunction with their checking accounts. BancorpSouth operates over 300 banking and insurance locations in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee and Texas.

CLASS ALLEGATIONS

14. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

15. The proposed classes are defined as:

All BancorpSouth customers, in the United States who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, maintained a non-commercial account, and incurred an overdraft fee as a result of BancorpSouth's practice of re-sequencing debit card transactions from highest to lowest (the "National Class").

All BancorpSouth customers having non-commercial accounts at branches in the state of Arkansas for the purpose of asserting claims under the Arkansas Deceptive Trade Practice Act, Ark. Code Ann. § 4-88-101, *et seq.* (the "Arkansas State Subclass") (*see* Fifth Claim for Relief, *infra*).

The National Class and the Arkansas State Subclass are collectively referred to as the "Classes."

16. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

17. Excluded from the Classes are BancorpSouth, its parents, subsidiaries, affiliates, officers and directors, any entity in which BancorpSouth has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

18. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to BancorpSouth's records.

19. The claims of the representative Plaintiff are typical of the claims of the Classes in that the representative Plaintiff, like all Class members, was charged overdraft fees by

BancorpSouth as a result of its practice of re-sequencing debit card transactions from highest to lowest. The representative Plaintiff, like all Class members, has been damaged by BancorpSouth's misconduct in that he has been assessed and/or will continue to be assessed unfair and unconscionable overdraft charges. Furthermore, the factual basis of BancorpSouth's misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes.

20. There are numerous questions of law and fact common to the Classes and those common questions predominate over any questions affecting only individual Class members.

21. Among the questions of law and fact common to the Classes are whether BancorpSouth:

a. Did not clearly disclose and/or refused to allow its customers to opt out of its overdraft protection program;

b. Did not obtain affirmative consent from its customers prior to processing transactions that would result in overdraft fees;

c. Does not alert its customers that a debit card transaction will trigger an overdraft fee, and does not provide its customers with an opportunity to cancel such transactions;

d. Manipulates and reorders transactions so that it can increase the number of overdraft fees it imposes;

e. Manipulates and reorders debits from highest to lowest in order to maximize the number of overdrafts and, consequently, the amount of overdraft fees;

f. Imposes overdrafts and overdraft fees when, but for reordering transactions, there would otherwise be sufficient funds in the account;

g. Fails to provide customers with accurate balance information;

h. Delays posting of transactions by customers using debit cards so that customers are charged overdraft fees on transactions, even though the customers had sufficient funds in their accounts to cover the transactions upon execution;

i. Charges exorbitant overdraft fees that bear no relationship to the actual costs and risks of covering insufficient funds transactions;

j. Breaches its covenant of good faith and fair dealing with Plaintiff and other members of the Classes through its overdraft policies and practices;

k. Requires its customers to enter into standardized account agreements which include unconscionable provisions;

l. Converts money belonging to Plaintiff and other members of the Classes through its overdraft policies and practices;

m. Is unjustly enriched through its overdraft policies and practices;
and

n. Violates the consumer protection acts of certain states through its overdraft policies and practices.

22. Other questions of law and fact common to the Classes include:

a. The proper method or methods by which to measure damages, and

b. The declaratory relief to which the Classes are entitled.

23. Plaintiff's claims are typical of the claims of other Class members, in that they arise out of the same wrongful overdraft policies and practices and the same or substantially

similar unconscionable provisions of BancorpSouth's account agreements and other related documents. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other Class member.

24. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of BancorpSouth, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and BancorpSouth's misconduct will proceed without remedy.

26. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COMMON FACTUAL ALLEGATIONS

A. BancorpSouth

27. According to its website, BancorpSouth has \$13.6 billion in assets and operates over 300 banking and insurance locations in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee and Texas.

28. BancorpSouth is in the business of providing its customers with a variety of banking services. One of the services provided by BancorpSouth for customers who open a checking account is a debit card, also known as a check card or ATM card. Through those debit cards, customers can engage in transactions using funds directly from their accounts by engaging in “debit” or “point of sale” (“POS”) transactions, or may withdraw money from their accounts at automated teller machines (“ATMs”). Whether the card is used to execute POS transactions or to withdraw cash from ATMs, the transaction is processed electronically. As a result, BancorpSouth is notified instantaneously when the card is swiped, and has the option to accept or decline transactions at such time.

29. BancorpSouth employs sophisticated software to automate its overdraft system. This program maximizes the number of overdrafts, and thus, the amount of overdraft fees charged per customer.

30. As a result of BancorpSouth’s manipulation and alteration of customers’ transactions records, funds in a customer’s account are depleted more rapidly and more overdraft fees are likely to be charged for multiple smaller transactions. Indeed, overdraft charges are likely to occur at times when, but for the manipulation and alteration, there would be funds in the account and no overdraft would occur. For example, if a customer, whose account has a \$50 balance at the time BancorpSouth processed several transactions, made four transactions of \$10 and one subsequent transaction of \$100 on the same day, the Bank would reorder the debits from

largest to smallest, imposing five overdraft fees on the customer. Conversely, if the \$100 transaction was debited last – consistent with the actual order of transactions – only one overdraft fee would be assessed. *See* FDIC Study of Bank Overdraft Programs, November 2008, *available at*: <http://www.fdic.gov/bank/analytical/overdraft/>, at 11, n. 12.

B. BancorpSouth’s Relevant Customer Documents Regarding Overdrafts

31. Plaintiff and all members of the Classes maintain or maintained a checking account with BancorpSouth. The terms of BancorpSouth’s checking accounts are contained in standardized account holder agreements, presented to its customers on a “take it or leave it” basis, drafted and imposed by BancorpSouth, which was the party of vastly superior bargaining strength, and thus constitute agreements of adhesion. A representative copy of BancorpSouth’s “Deposit Account Terms and Conditions” (the “Deposit Agreement”), covering BancorpSouth’s checking account customers is attached as Exhibit A.

32. The Deposit Agreement states:

If more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we *may* pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order.

Id. at 5 (emphasis added).

33. BancorpSouth also publishes a document entitled “Account Information Statement” that describes overdrafts and charges potentially applicable to customers’ account, which is attached hereto as Exhibit B. The Account Information Statement states:

If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or an other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we *may* decide to pay any or all of them in any order we choose. When we pay Transactions, we *generally* choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for

Transactions *may* result in greater Overdraft-related Fees than if we had chosen to pay them in some other order or had chosen not to pay them.

Id. at 4 (emphasis added).¹

34. The Deposit Agreement and, upon information and belief, related documents, failed to disclose to customers that they had the option to “opt out” from the Bank’s overdraft scheme, although it is possible for them to opt out upon request.

C. BancorpSouth’s Re-Ordering of Checking Account Transactions

35. In an effort to maximize overdraft revenue, BancorpSouth manipulates and reorders debits from highest to lowest during given periods of time. BancorpSouth reorders transactions for no reason other than to increase the number of exorbitant overdraft fees it can charge. This practice violates the consumer protection laws of certain states and the covenant of good faith and fair dealing in the Bank’s Deposit Agreement.

36. In addition, BancorpSouth misleads its customers regarding its reordering practices. Instead of unequivocally telling its customers that it will reorder debits from highest to lowest, the Bank states in its Deposit Agreement that “we *may* pay any of them in any order we choose” and in the Account Information Statement that “we *generally* choose to pay the largest Transaction first and the smallest Transaction last.” These statements are deceptive and/or unfair because it is, in fact, the Bank’s practice to *always* reorder debits from highest to lowest, and because the Bank groups together POS transactions that occurred on subsequent days with POS transactions that occurred on earlier days, and reorders them so that higher debits that occurred on subsequent days are posted to its customers’ accounts before lower debits that occurred on earlier days, contrary to the terms of the Bank’s Deposit Agreement, Account Information Statement, and its customers’ reasonable expectations. The Bank’s practices thus violate the

¹ The Account Information Statement has an effective date of May 10, 2010.

covenant of good faith and fair dealing implied in the Bank Deposit Agreement and Account Information Statement, as well as the consumer protection laws of numerous states.

37. BancorpSouth also claims that its Internet Banking service “helps you streamline your financial information, giving you greater control of your finances.” BancorpSouth further claims that with Internet Banking “you have quick and easy access to all your account balance information.” Contrary to BancorpSouth’s representations, the online account features are not a means by which consumers can gain control of their finances or effectively manage their accounts. In fact, the inaccurate and unreliable information displayed in the online account information on the Bank’s website dupes consumers into generating overdraft fees for BancorpSouth.

38. Transactions involving debit cards used by BancorpSouth customers, including the withdrawal of cash from ATMs and POS transactions with vendors, are processed electronically. As a result, BancorpSouth is notified instantaneously when the customer’s debit card is swiped, and has the option to accept or decline these transactions.

39. Notwithstanding the instantaneous nature of these electronic debit card transactions, under BancorpSouth’s posting system, it fails to post charges in the order in which they are assessed or received. BancorpSouth developed a policy and employs a practice whereby account charges and debits are posted to its customers’ accounts out of chronological order for the sole purpose of maximizing the number of overdraft transactions and, therefore, the amount of overdraft fees charged to its customers.

40. Instead of processing such transactions in chronological order, BancorpSouth processes them starting with the largest debit and ending with the smallest debit, so as to

generate the largest possible number of overdrafts and the greatest possible amount of overdraft fees.

41. BancorpSouth refrains from immediately posting charges to a customer's account as it receives them – sometimes for multiple business days. By holding charges rather than posting them immediately to an account, BancorpSouth is able to amass a number of charges on the account. Subsequently, BancorpSouth posts all of the amassed charges on a single date. When the group of charges is eventually posted to the customer's account, BancorpSouth posts them in order of largest to smallest – not in the order in which they were received or in the order in which they were charged. This delayed posting results in the imposition of multiple overdraft fees that would not otherwise be imposed. The delayed posting also prevents customers from ascertaining the accurate balances in their accounts.

42. BancorpSouth's policy and practice of posting charges from largest to smallest, rather than chronologically, or from smallest to largest, is specifically designed to maximize the generation of overdraft fees by triggering overdraft fees for account charges that would not otherwise result in such fees.

43. BancorpSouth enforces an unconscionable policy whereby charges assessed are posted to customers' accounts in a non-chronological order, from highest to lowest, and are held for multiple days and then batched together, to maximize the number of overdraft transactions and fees. BancorpSouth's processing practices substantially increase the likelihood that customers' smaller charges will result in multiple overdraft fees. The practices provide BancorpSouth with substantially higher service fee revenues than it would otherwise achieve absent these practices.

44. BancorpSouth also assesses overdraft fees at times when actual funds in the customer's account are sufficient to cover all debits that have been submitted to the Bank for payment. It does this by placing a "hold" on actual funds in the customer's account. In doing so, BancorpSouth charges overdraft fees where it faces no risk, because the cash balance in the customer's account has not dropped below zero.

45. A debit card can be used to make a purchase in two ways: (1) an Automated Clearing House ("ACH") transaction in which a customer enters his/her PIN number at the point of sale; or (2) an "offline signature" transaction, in which the debit card is treated like a credit card and the customer usually is required to sign a receipt. In the former, the money is debited from the account instantaneously. In the latter, the "offline signature" transaction occurs in two parts: first, authorization for the purchase amount is obtained by the merchant. Second, the transaction is not actually "settled" (that is, money between the bank and the merchant does not change hands) until the merchant submits the transaction to the bank sometime after the customer's purchase. Before settlement, "authorization holds" are placed on the customer's account, preventing access to money so held. For some transactions, the authorization hold is for an amount larger than the purchase actually made by the customer. BancorpSouth charges an overdraft fee when the authorization hold amount—not the purchase price—pushes an account balance into negative territory.

46. Such "authorization hold" policies, and the extent to which they are used by BancorpSouth to charge overdraft fees, are inconsistent with BancorpSouth's Deposit Agreement.

47. The terms of the Deposit Agreement fail to alert customers that they must often keep a large cushion of funds in their account in order to guard against an overdraft fee

even when customers do not spend more than the funds in their account, and are materially deceptive. Accordingly, BancorpSouth charges customers overdraft fees even when there are sufficient funds in customers' accounts to cover transactions.

48. Charging an overdraft fee when in fact an account has never been over-drafted is materially deceptive. By charging overdraft fees when in fact the customer's account has not been over-drafted, BancorpSouth breached its contract with Plaintiff.

49. As a result, Plaintiff and members of the Classes have been assessed overdraft fees for transactions which occurred when they actually had sufficient funds in their accounts to cover those transactions.

D. BancorpSouth's Cloaking of Accurate Balance Information

50. BancorpSouth actively promotes the convenience of its debit cards and other electronic debiting, but fails to provide customers with accurate balance information. When customers execute account transactions, they generally do not have access to an accurate balance register or balance information.

51. Online advertisements claim that online banking affords customers "quick and easy access to all of [their] account balance information" presumably by giving customers a real-time view of all the transactions scheduled to be posted to their account. But in reality, BancorpSouth's computers are set up not to process transactions in the order received, but in order from highest to lowest dollar amount so as to ensure that the maximum number of overdraft charges are imposed on customers' accounts.

52. BancorpSouth provides inaccurate balance information to its customers through its electronic network. BancorpSouth informs its customers that they have a positive balance when, in reality, they have a negative balance, despite the Bank's actual knowledge of outstanding debits and transactions.

53. Even when BancorpSouth has actual knowledge of outstanding transactions which have already created a negative balance in a customer's account, it encourages the customer to incur more overdraft charges by approving – rather than prudently declining – subsequent debit card purchases and other electronic transactions.

E. BancorpSouth's Failure to Notify Customers of Overdrafts or Advise Customers of Their Right to Opt Out

54. At the time its debit cards are used in POS transactions or at ATMs, BancorpSouth is able to determine, almost instantaneously, whether there are sufficient funds in a customer's account to cover that particular transaction. The Bank has the technological capability to decline transactions (which it does when a pending transaction would exceed a pre-determined, overdraft tolerance limit for the account), or notify customers at that very moment that the particular debit card transaction would result in an overdraft. Prior to the effective date of the opt in/opt out requirements of Regulation E (the "Effective Date"), BancorpSouth could have given customers the option to decline the transaction to avoid incurring overdraft fees, but it did not do so because it sought to maximize the amount of revenue generated through its assessment of overdraft fees.

55. Notwithstanding its technological capabilities and actual knowledge, BancorpSouth failed to provide notice to Plaintiff and the Classes that a particular debit card transaction would result in an overdraft and, hence, an overdraft fee. Because BancorpSouth's customers were not notified of the potential overdraft, and were not given the option of declining the debit card transaction or providing another form of payment, the customers were assessed monetary damages in the form of overdraft fees.

56. Prior to the Effective Date, BancorpSouth failed to make Plaintiff and Class members aware that they could opt out of its overdraft scheme upon request, thereby avoiding any overdraft fees from being charged.

F. BancorpSouth's Overdraft Policies and Practices Are Contrary to Best Practices

57. By engaging in the conduct described herein, BancorpSouth has failed to follow the list of “best practices” for overdraft programs set forth in the “Joint Guidance on Overdraft Protection Programs” (“Joint Guidance”) issued by the United States Department of the Treasury, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, the “Agencies”). A copy of the Joint Guidance is attached as Exhibit C. These “best practice” recommendations include: “Provide election or opt-out of service. Obtain affirmative consent of consumers to receive overdraft protection. Alternatively, where overdraft protection is automatically provided, permit consumers to ‘opt-out’ of the overdraft program and provide a clear consumer disclosure of this option.” 70 F.R. 9127-01, 9132.

58. According to rules proposed by the Agencies: “Injury [caused by overdraft charges] is not outweighed by countervailing benefits. . . . This is particularly the case for ATM withdrawals and POS debit card transactions where, but for the overdraft service, the transaction would typically be denied and the consumer would be given the opportunity to provide other forms of payment without incurring any fee.” 73 F.R. 28904-01, 28929 (May 19, 2008).

59. The Joint Guidance also advises banks to “[a]lert customers before a transaction triggers any fees. When consumers attempt to withdraw or transfer funds made available through an overdraft protection program, provide a specific consumer notice, where

feasible, that completing the withdrawal may trigger the overdraft fees.” 70 F.R.D. 9127, 9132. The Joint Guidance further advises that “[t]his notice should be presented in a manner that permits consumers to cancel the attempted withdrawal or transfer after receiving the notice.” *Id.*

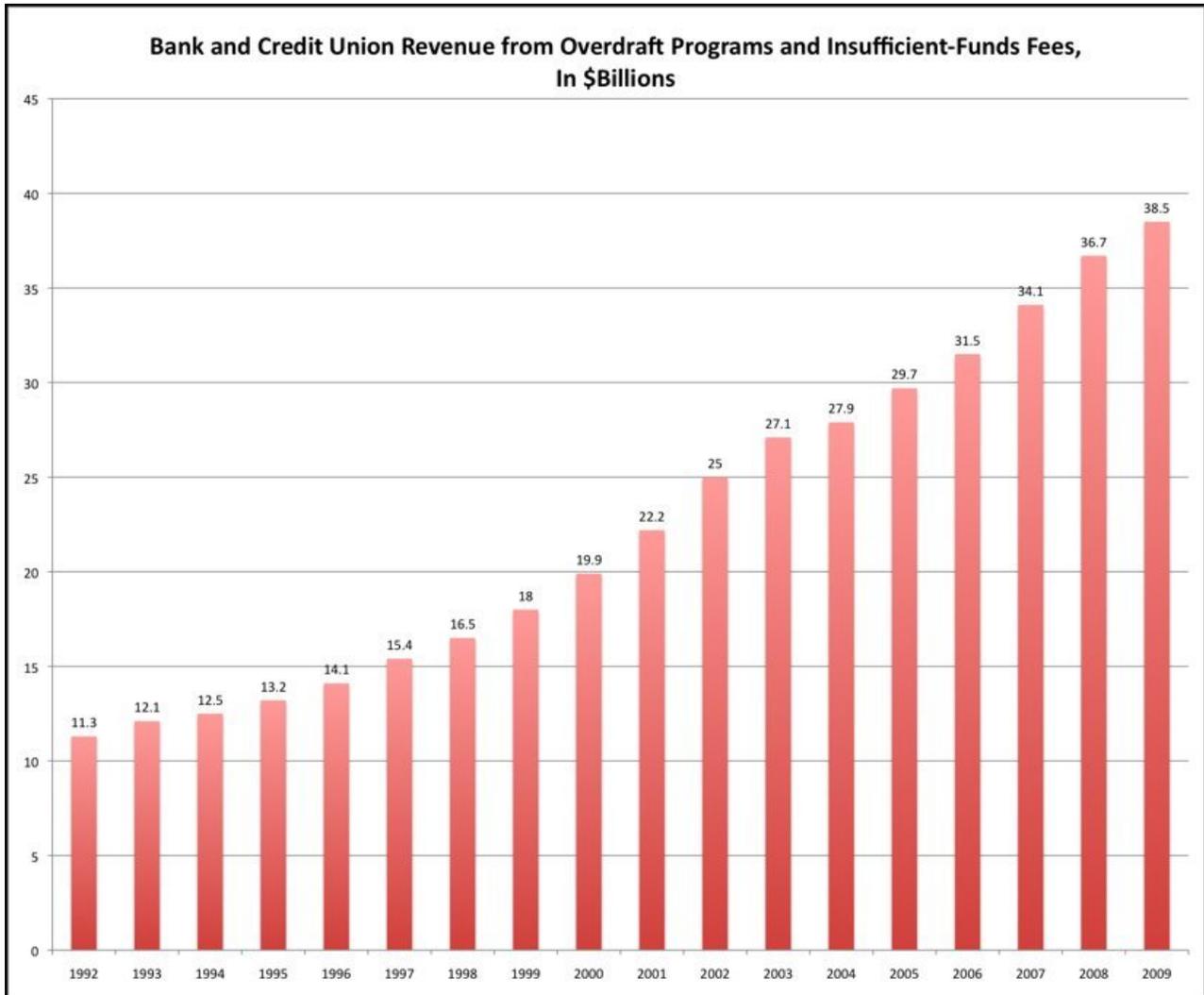
60. Similarly, the list of “best practices” recommended in “Overdraft Protection: A Guide for Bankers,” issued by the American Bankers Association, includes offering customers the option of “opting out” of any overdraft programs, and informing customers, before they access funds, that a particular point of sale or ATM transaction will cause them to incur an overdraft fee. A copy of “Overdraft Protection: A Guide for Bankers” is attached as Exhibit D.

61. BancorpSouth’s overdraft policies make it difficult for customers to avoid injury even if they carefully track the balance in their account. In fact, the Agencies have stated that “Injury” resulting from such policies, “is not reasonably avoidable” by the consumer. 73 F.R. 28904-01, 28929. “It appears that consumers cannot reasonably avoid this injury if they are automatically enrolled in an institution’s overdraft service without having an opportunity to opt out. Although consumers can reduce the risk of overdrawing their accounts by carefully tracking their credits and debits, consumers often lack sufficient information about key aspects of their account. For example, a consumer cannot know with any degree of certainty when funds from a deposit or a credit for a returned purchase will be made available.”

62. On October 6, 2009, the Center for Responsible Lending issued a report entitled “Overdraft Explosion: Bank Fees for Overdrafts Increase 35% in Two Years.” The report, attached hereto as Exhibit E, finds that it is now “standard procedure to automatically enroll checking account customers in their most expensive overdraft loan program.” The report finds that debit card transactions account for more overdraft fees than traditional checks or any other type of transaction, even though “debit card transactions and ATM withdrawals . . . could

easily be denied for no fee.” The report also finds that overdraft fees increased 35 percent from 2006 to 2008, and that over 50 million Americans overdrew their accounts in a 12 month period, with 27 million accounts incurring five or more overdraft fees.

63. A chart from the research company Moebs Services shows that, in every year since 1992, banks have gained increased revenues from overdraft fees:



G. BancorpSouth’s Unconscionable Provisions and Policies

64. BancorpSouth’s overdraft policies and practices are or were unconscionable in the following respects, among others:

a. Prior to the Effective Date, the Bank did not disclose or reasonably disclose to customers that they had the option to “opt out” of the Bank’s overdraft scheme;

b. Prior to the Effective Date, the Bank did not obtain affirmative consent from checking account customers prior to processing a transaction that would overdraw the account and result in an overdraft fee;

c. The Bank does not alert its customers that a debit card transaction will trigger an overdraft, and does not provide the customer the opportunity to cancel that transaction, before assessing an overdraft fee;

d. The Deposit Agreement and related documents, are contracts of adhesion in that they are standardized forms, imposed and drafted by the Bank, which is a party of vastly superior bargaining strength, and only relegates to the customer the opportunity to adhere to them or reject the agreement in its entirety;

e. The amount of overdraft fees is disclosed in an ineffective, ambiguous, misleading, and unfair manner, since it is not contained in the Deposit Agreement, but rather in a different and separate document, which is not signed by the depositor; and

f. The Deposit Agreement provided to customers is ineffective, ambiguous, deceptive, unfair, and misleading in that it does not unambiguously state that the Bank always reorders debits from high to low, even though BancorpSouth *always* reorders transactions in this way for customers in order to maximize overdrafts and overdraft fee revenues for the Bank.

H. BancorpSouth’s Overdraft Practices Harmed Plaintiff

65. BancorpSouth’s wrongful overdraft policies and practices described above harmed Plaintiff and members of the Classes. The following allegations regarding the named

Plaintiff are made for purposes of illustrating the harm and damage sustained by Plaintiff and members of the Classes as a result of BancorpSouth's wrongful overdraft policies and practices.

66. Plaintiff, Shane Swift, is a current checking account customer of BancorpSouth.

67. In connection with his account, the Bank issued a debit card to Mr. Swift. A debit card allows customers to access their checking account funds by using the card to execute a transaction. The charge is processed electronically, and the Bank has the option to accept or decline the transaction at the point of sale.

68. BancorpSouth charged Mr. Swift multiple overdraft fees on numerous occasions. For example, Mr. Swift was charged five overdraft fees on May 5, 2010, in the amount of \$32.00² each, for a total of \$160.00. Based on information and belief, the overdraft fees were based on the following ordering of transactions:

Balance Sheet per BancorpSouth Reordering Scheme
(Debits Processed from Highest to Lowest)

		<u>Debits</u>	<u>Fees</u>	<u>Balance</u>
	Beginning Balance on 5/05/2010:			\$117.39
<u>Date Posted</u>	<u>Debit Description</u>			
5/05/2010	WAL-MART #007 POCAHONTAS AR	75.42		41.97
5/05/2010	LIFETOUCH SCHOOL 9528265500	41.00		0.97
5/05/2010	LIFETOUCH SCHOOL 9528265500	41.00		-40.03
5/05/2010	J P FLASH IN07 WALNUT RIDGE AR	21.00		-61.03
5/05/2010	WAL-MART #0071 POCAHONTAS AR	20.08		-81.11
5/05/2010	AEROPOSTALE #828 JONESBORO AR	19.44		-100.55
5/05/2010	HIBACHI GRILL SU JONESBORO AR	19.42		-119.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-151.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-183.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-215.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-247.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-279.97
		Total Fees:	\$160.00	

² On May 10, 2010, BancorpSouth increased its overdraft fee to \$35.00, as evidenced by the attached Account Information Statement.

69. If BancorpSouth had not manipulated and reordered Mr. Swift's transactions from highest to lowest, he would not have incurred five overdraft fees.

70. For instance, if BancorpSouth had posted the transactions from lowest to highest, Mr. Swift would have incurred only three overdraft fees instead of five:

Balance Sheet if Debits Were Processed from Lowest to Highest

		Debits	Fees	Balance
	Beginning Balance on 5/05/2010:			\$117.39
Date Posted	Debit Description			
5/05/2010	HIBACHI GRILL SU JONESBORO AR	19.42		97.97
5/05/2010	AEROPOSTALE #828 JONESBORO AR	19.44		78.53
5/05/2010	WAL-MART #0071 POCAHONTAS AR	20.08		58.45
5/05/2010	J P FLASH IN07 WALNUT RIDGE AR	21.00		37.45
5/05/2010	LIFETOUCH SCHOOL 9528265500	41.00		-3.55
5/05/2010	LIFETOUCH SCHOOL 9528265500	41.00		-44.55
5/05/2010	WAL-MART #007 POCAHONTAS AR	75.42		-119.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-151.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-183.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-215.97
		Total Fees:	\$96.00	

71. Likewise, if BancorpSouth had posted the transactions in chronological order, Mr. Swift would have been assessed only four overdraft fees instead of five:

Balance Sheet if Debits Were Processed in Chronological Order³

		Debits	Fees	Balance
	Beginning Balance on 5/05/2010:			\$117.39
Date Posted	Debit Description			
5/03/2010	AEROPOSTALE #828 JONESBORO AR	19.44		97.95
5/03/2010	HIBACHI GRILL SU JONESBORO AR	19.42		78.53
5/04/2010	WAL-MART #0071 POCAHONTAS AR	20.08		58.45
5/04/2010	WAL-MART #007 POCAHONTAS AR	75.42		-16.97
5/04/2010	J P FLASH IN07 WALNUT RIDGE AR	21.00		-37.97
5/05/2010	LIFETOUCH SCHOOL 9528265500	41.00		-78.97
5/05/2010	LIFETOUCH SCHOOL 9528265500	41.00		-119.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-151.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-183.97

³ The transactions are shown in the order in which they were incurred based on Plaintiff's receipts, which show the date, hour and minute of each transaction. Plaintiff is unable to determine when the two transactions identified as "Lifetouch School 9528265500" were incurred, given that they were paid with checks. Thus, Plaintiff has listed these two transactions on the same date in which they are listed in the Bank's statements.

5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-215.97
5/06/2010	OVERDRAFT FEE (DDA DEBIT)		32.00	-247.97
		Total Fees:	\$128.00	

72. BancorpSouth failed to notify Plaintiff that he could be assessed overdraft fees on transactions even though there were sufficient funds in the checking account to cover the transaction at the time the transaction was executed. In addition, BancorpSouth never notified Plaintiff at the time he executed the purported insufficient funds transactions described above, that his checking account was overdrawn or that he would be charged an overdraft fee as a result of the transactions. Furthermore, BancorpSouth paid, rather than returned, all of the debit card charges described above, even though Plaintiff's accounts purportedly lacked sufficient funds to cover the transactions.

73. Based on information and belief, the overdraft charges incurred by Plaintiff are representative of millions of dollars of overdraft fees that BancorpSouth wrongfully assessed and deducted from its customers' accounts. These wrongful takings are especially egregious considering the fact that the Bank approved each transaction and knew at the time of approval whether there were sufficient funds in the account to cover the transaction.

I. The Damages Sustained by Plaintiff and the Classes

74. As shown by this example, BancorpSouth's overdraft policies make it difficult for a customer to avoid injury even if the customer keeps close track of the balance in his or his account. In fact, the Agencies have stated that "injury" resulting from such policies "is not reasonably avoidable" by consumers. 73 F.R. 28904-01, 28929. "It appears that consumers cannot reasonably avoid this injury if they are automatically enrolled in an institution's overdraft service without having an opportunity to opt out. Although consumers can reduce the risk of overdrawing their accounts by carefully tracking their credits and debits, consumers often lack sufficient information about key aspects of their account. For example, a consumer cannot know

with any degree of certainty when funds from a deposit or a credit for a returned purchase will be made available.” *Id.*

75. According to rules proposed by the Agencies: “Injury [caused by overdraft charges] is not outweighed by countervailing benefits. . . . This is particularly the case for ATM withdrawals and POS debit card transactions where, but for the overdraft service, the transaction would typically be denied and the consumer would be given the opportunity to provide other forms of payment without incurring any fee.” 73 F.R. 28904-01, 28929 (May 19, 2008).

76. Thus, as a consequence of BancorpSouth’s overdraft policies and practices, Plaintiff and the Classes have been wrongfully forced to pay overdraft fees. BancorpSouth has improperly deprived Plaintiff and the Classes of significant funds, causing ascertainable monetary losses and damages.

77. As a consequence of BancorpSouth’s improper overdraft fees, BancorpSouth has wrongfully deprived Plaintiff and the Classes of funds to which it had no legitimate claim.

78. Plaintiff and the Classes had sufficient funds to cover at least some of the transactions for which they and the Classes were charged overdraft fees. Plaintiff and members of the Classes either had adequate funds to cover the transactions posted to their accounts, or the accounts were allowed to become overdrawn, even by *de minimis* margins, exclusively so that BancorpSouth could impose these wrongful charges. In many instances, BancorpSouth’s manipulation of the process for imposing overdraft fees triggered a cascade of charges that exponentially added to the charges it collected from Plaintiff and Class members.

79. All conditions precedent to the relief sought herein have either occurred or have been performed or waived.

FIRST CLAIM FOR RELIEF
Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing⁴
(On Behalf of the National Class)

80. Plaintiff repeats paragraphs 1 through 79 above.

81. Plaintiff and BancorpSouth have contracted for bank account deposit, checking, ATM, and debit card services, as embodied in BancorpSouth's Deposit Agreement and related documentation.

82. Under the laws of the states where BancorpSouth does business, good faith is an element of every contract pertaining to the assessment of overdraft fees. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

83. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

⁴ Arkansas and certain other states recognize a claim for breach of the covenant of good faith and fair dealing as a separate and independent claim from breach of contract. Other states treat breach of the covenant of good faith and fair dealing as a species of breach of contract. For the sake of convenience in this multi-district litigation, the Complaint pleads these two types of claims, which are substantively identical, in a single count.

84. BancorpSouth has breached the covenant of good faith and fair dealing in the Deposit Agreement through its overdraft policies and practices as alleged herein.

85. Plaintiff and the National Class have performed all, or substantially all, of the obligations imposed on them under the Deposit Agreement.

86. Plaintiff and members of the National Class have sustained damages as a result of BancorpSouth's breach of the covenant of good faith and fair dealing.

SECOND CLAIM FOR RELIEF
Unconscionability
(On Behalf of the National Class)

87. Plaintiff repeats paragraphs 1 through 79 above.

88. BancorpSouth's overdraft policies and practices are or were substantively and procedurally unconscionable in the following respects, among others:

a. Prior to the Effective Date, the Bank did not disclose or reasonably disclose to customers that they had the option to "opt out" of the Bank's overdraft scheme;

b. Prior to the Effective Date, the Bank did not obtain affirmative consent from checking account customers prior to processing a transaction that would overdraw the account and result in an overdraft fee;

c. The Bank does not alert its customers that a debit card transaction will trigger an overdraft, and does not provide the customer the opportunity to cancel that transaction, before assessing an overdraft fee;

d. The Deposit Agreement and related documents, are contracts of adhesion in that they are standardized forms, imposed and drafted by the Bank, which is a party of vastly superior bargaining strength, and only relegates to the customer the opportunity to adhere to them or reject the agreement in its entirety;

e. The amount of overdraft fees is disclosed in an ineffective, ambiguous, misleading, and unfair manner, since it is not contained in the Deposit Agreement, but rather in a different and separate document which is not signed by the depositor; and

f. The Deposit Agreement provided to customers is ineffective, ambiguous, deceptive, unfair, and misleading in that it does not unambiguously state that the Bank always reorders debits from high to low, even though BancorpSouth *always* reorders transactions in this way for customers in order to maximize overdrafts and overdraft fee revenues for the Bank.

89. Considering the great business acumen and experience of BancorpSouth in relation to Plaintiff and the National Class, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law.

90. The imposition of overdraft charges which exceed the amount overdrawn (*e.g.*, the imposition of a \$32 charge on an overdraft of less than \$32) is itself unconscionable. Such charges are not reasonably related to the Bank's cost of covering the overdraft and/or its risk of nonpayment (where the Bank pays the overdraft), or to the Bank's cost of returning the item unpaid (where the Bank does not pay the overdraft).

91. Plaintiff and members of the National Class have sustained damages as a result of BancorpSouth's unconscionable policies and practices as alleged herein.

THIRD CLAIM FOR RELIEF
Conversion
(On Behalf of the National Class)

92. Plaintiff repeats paragraphs 1 through 79 above.

93. BancorpSouth had and continues to have a duty to maintain and preserve its customers' checking accounts and to prevent their diminishment through its own wrongful acts.

94. BancorpSouth has wrongfully collected overdraft fees from Plaintiff and the members of the National Class, and has taken specific and readily identifiable funds from their accounts in payment of these fees in order to satisfy them.

95. BancorpSouth has, without proper authorization, assumed and exercised the right of ownership over these funds, in hostility to the rights of Plaintiff and the members of the National Class, without legal justification.

96. BancorpSouth continues to retain these funds unlawfully without the consent of Plaintiff or members of the National Class.

97. BancorpSouth intends to permanently deprive Plaintiff and the members of the National Class of these funds.

98. These funds are properly owned by Plaintiff and the members of the National Class, not BancorpSouth, which now claims that it is entitled to their ownership, contrary to the rights of Plaintiff and the members of the National Class.

99. Plaintiff and the members of the National Class are entitled to the immediate possession of these funds.

100. BancorpSouth has wrongfully converted these specific and readily identifiable funds.

101. BancorpSouth's wrongful conduct is continuing.

102. As a direct and proximate result of this wrongful conversion, Plaintiff and the members of the National Class have suffered and continue to suffer damages.

103. By reason of the foregoing, Plaintiff and the members of the National Class are entitled to recover from BancorpSouth all damages and costs permitted by law, including all amounts that BancorpSouth has wrongfully converted.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment
(On Behalf of the National Class)

104. Plaintiff repeats paragraphs 1 through 79 above.

105. Plaintiff, on behalf of himself and the National Class, assert a common law claim for unjust enrichment.

106. By means of BancorpSouth's wrongful conduct alleged herein, BancorpSouth knowingly provides banking services to Plaintiff and members of the National Class that are unfair, unconscionable, and oppressive.

107. BancorpSouth knowingly received and retained wrongful benefits and funds from Plaintiff and members of the National Class. In so doing, BancorpSouth acted with conscious disregard for the rights of Plaintiff and members of the National Class.

108. As a result of BancorpSouth's wrongful conduct as alleged herein, BancorpSouth has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the National Class.

109. BancorpSouth's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

110. Under the common law doctrine of unjust enrichment, it is inequitable for BancorpSouth to be permitted to retain the benefits it received, and is still receiving, without justification, from the imposition of overdraft fees on Plaintiff and members of the National

Class in an unfair, unconscionable, and oppressive manner. BancorpSouth's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

111. The financial benefits derived by BancorpSouth rightfully belong to Plaintiff and members of the National Class. BancorpSouth should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the National Class all wrongful or inequitable proceeds received by them. A constructive trust should be imposed upon all wrongful or inequitable sums received by BancorpSouth traceable to Plaintiff and the members of the National Class.

112. Plaintiff and members of the National Class have no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
Violations of Ark. Code Ann. § 4-88-101, et seq.
(On Behalf of the Arkansas State Subclass)

113. Plaintiff repeats paragraphs 1 through 79 above.

114. This claim is asserted on behalf of the members of the Arkansas State Subclass under Arkansas' consumer protection statute.

115. BancorpSouth engages in unfair business practices relating to the imposition of overdraft fees on consumers, in violation of the Arkansas Deceptive Trade Practice Act, Ark. Code Ann. § 4-88-101, *et seq.*

116. Ark. Code Ann. § 4-88-107 prohibits and declares unlawful any "deceptive and unconscionable trade practices," which includes "[e]ngaging in any [] unconscionable, false, or deceptive act or practice in business, commerce, or trade."

117. BancorpSouth violated § 4-88-107 by the conduct alleged above including, but not limited to, employing an unfair and deceptive policy and practice of re-sequencing debit purchases from largest to smallest, and misrepresenting and failing to disclose its policy and

practice of re-sequencing debit purchases from largest to smallest in its Deposit Agreement and related documents.

118. In addition, Ark. Code Ann. § 4-88-108 declares unlawful “[t]he concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.”

119. BancorpSouth violated § 4-88-108 by the conduct alleged above including, but not limited to, misrepresenting and failing to disclose its policy and practice of re-sequencing debit purchases from largest to smallest in its Deposit Agreement and related documents. BancorpSouth misrepresented, concealed, suppressed, or otherwise omitted such material fact with intent that its customers rely upon their concealment, suppression, or omission.

120. As redress for BancorpSouth’s repeated and ongoing violations of this consumer protection statute, Plaintiff and the Arkansas State Subclass are entitled to, *inter alia*, damages and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Classes demand a jury trial on all claims so triable and judgment as follows:

1. Declaring BancorpSouth’s overdraft fee policies and practices to be wrongful, unfair and unconscionable;
2. Restitution of all overdraft fees paid to BancorpSouth by Plaintiff and the Classes, as a result of the wrongs alleged herein in an amount to be determined at trial;
3. Disgorgement of the ill-gotten gains derived by BancorpSouth from its misconduct;
4. Actual damages in an amount according to proof;
5. Punitive and exemplary damages;

6. Pre-judgment interest at the maximum rate permitted by applicable law;
7. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
8. Such other relief as this Court deems just and proper.

Dated: December 6, 2010.

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Plaintiffs' Executive Committee

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 6, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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Miami, Florida 33137
bobby@alterslaw.com

Exhibit “A”

**Deposit Account
Terms and Conditions**

Effective January 31, 2009



Thank you for banking with BancorpSouth.

From time to time, we update the Terms and Conditions which govern your BancorpSouth deposit accounts. Below are new Terms and Conditions which will become effective on January 31, 2009. These new Terms and Conditions replace the Terms and Conditions documents you have received previously. These new Terms and Conditions cover the use of all types of depository accounts you have with us, both consumer and commercial, except for Time Deposit and Individual Retirement Accounts. These new Terms and Conditions do not change the structure of any of your accounts or change any fees applicable to your accounts.

If you have any questions about these new Terms and Conditions, please call your local BancorpSouth office or our InfoLine at 888-797-7711.

YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS EFFECTIVE JANUARY 31, 2009

EFFECTIVE JANUARY 31, 2009, THE FOLLOWING TERMS AND CONDITIONS WILL SUPERSEDE AND REPLACE THE TERMS AND CONDITIONS WHICH HAVE PREVIOUSLY GOVERNED YOUR DEPOSIT ACCOUNTS (OTHER THAN TIME DEPOSIT AND INDIVIDUAL RETIREMENT ACCOUNTS) AT BANCORPSOUTH. YOUR USE OF ANY ACCOUNT IN ANY WAY ON OR AFTER JANUARY 31, 2009, CONSTITUTES YOUR ACCEPTANCE OF AND AGREEMENT TO THE FOLLOWING NEW TERMS AND CONDITIONS.

AGREEMENT – These terms and conditions (this “Agreement”) govern your deposit relationships with us unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this Agreement, the “account” means each deposit account you maintain with us other than Time Deposit (Certificate of Deposit) accounts and Individual Retirement Accounts: “we,” “our,” or “us” mean BancorpSouth Bank; “you” or “your” mean the owner(s) of the account; and “signature page” means the page(s) containing the signatures of the owner(s) of the account. This Agreement applies separately to each account. The account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here. The purpose of this Agreement is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

LIABILITY – Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms and conditions set forth in this Agreement and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this Agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys’ fees.

DEPOSITS – Any items, other than cash, accepted for deposit (including items drawn “on us”) will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks’ deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to the account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to the account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. All transactions received after our daily cut-off time on a business day we are open (a “banking day”), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

WITHDRAWALS – Any one of you who signs the signature page, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing the signature page to endorse any item payable to you or your order for deposit to the account or any other transaction with us. You agree that our right to charge a check against the account does not depend on the date of the check. Therefore, we may charge a check against the account

before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against the account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceed any frequency limitation. Even if we honor a non-conforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days’ written notice before any withdrawal or transfer.

ACH, WIRE AND FUNDS TRANSFERS – We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from the account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction), even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error; the transfer will not be considered an unauthorized transac-

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tion, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on the account, you agree that we may treat such transaction as a transaction authorized by you.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION – You intend these rules to apply to the account depending on the form of ownership and beneficiary designation, if any, specified on the signature page. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Single Party Account** is owned by one person. **Multiple Party Account** is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction (“or”, “and”) used between the depositors’ names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any one account owner or authorized signer may transact on the account to the exclusion of the other(s), and each of you authorizes each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor

for the payment made. **Pay-On-Death Account** Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own the account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. Any one account owner or authorized signer may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. **Fiduciary Account** – A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this Agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with the account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary’s authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporate, Partnership, LLC, Government and other Organizational Accounts** We will usually require a separate resolution in a form acceptable to us designating the person(s) permitted to make withdrawals from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

STOP-PAYMENTS – A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut-off time. Our stop-payment cut-off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from the account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

AMENDMENTS AND TERMINATION – We may change, in whole or in part, any term of this Agreement or any of the disclosures indicated on the signature page or previously given to you. Rules governing changes in interest rates have been provided sepa-

ately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

STATEMENTS – You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in the account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If the account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as “Positive Pay” cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If the account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

DIRECT DEPOSITS – If, in connection with a direct deposit plan, we deposit any amount in the account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNTS – If you intend for the account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the “Temporary Account”). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the “Permanent Account”). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner’s signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this Agreement.

SET-OFF - You each agree that we may, without prior notice to you, set off the funds in the account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons’ or legal entity’s right to withdraw. If the debt arises from a note, “any due and payable debt” includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to the account if: (a) it is an Individual Retirement Account or other tax-deferred retirement account, or (b) the debtor’s right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the

dishonor occurs because we set off a debt against the account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

FACSIMILE SIGNATURES – You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

AUTHORIZED SIGNERS – An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay-On-Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

ACCOUNTS OWNED BY MINORS – If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. **EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.**

REFUSAL OF DEPOSITS – We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

ORDER OF PAYMENT – Unless otherwise provided in the Account Information Statement (see **OTHER TERMS** section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

ERRORS – If there occurs any error on the account in your favor, such as crediting the account for any amount to which you are not entitled, charging the account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this

account to correct the error and that, if there are insufficient funds in the account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys’ fees and expenses in the event we sue you to recover the amount necessary to correct the error.

DEPOSITS NOT MADE IN PERSON – We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

RESTRICTIVE LEGENDS – For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

CHECK CHARACTERISTICS – If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

SECURITY INTEREST – In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in the account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys’ fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from the account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If the account has any Pay-On-Death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

PAYMENT TO BENEFICIARIES – Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close the account and open a new account under such beneficiary’s signature.

INDEMNIFICATION BY FIDUCIARY – IF THE ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THE ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE “ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY” SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

SIGNATURE BY MARK – If any signature which appears on the signature page is by mark (such as an “X”), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY – IN THE EVENT OF ANY DISPUTE REGARDING THE ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THE ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THE ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS’ FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THE ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEYS’ FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND

THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THE ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

GOVERNING LAW; PROCESS; REPRESENTATIVES –

With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the signature page and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, the account or any tax identification number associated with the account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over the account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of the account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to the account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

EFFECT OF TERMINATION OR AMENDMENT –

Termination of the account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to the account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of the account after we give you notice of any amendment to this Agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have

authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with the account which is at variance with this Agreement shall constitute a modification or amendment of this Agreement.

OTHER TERMS – The account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to the account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to the account.

SEVERABILITY – In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

ARBITRATION – IF THE ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY (“CLAIM”) BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THE ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THE ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

Exhibit “B”



P.O. Box 4499
Tupelo, MS 38803-4499

**Important Overdraft
Service Information**

TRINA N SWIFT 191045
TERRY S SWIFT
230 SOUTHWIND
POCAHONTAS AR 72455-9113

Response required for your checking account to continue working as it does today.

Have you ever had a situation where you are making a purchase with your debit card and suddenly realize that the check you meant to deposit a few days earlier is still sitting in your wallet?

Peace of Mind

The BancorpSouth Overdraft Payment Service you are automatically enrolled in as a BancorpSouth checking accountholder helps give you the peace of mind that BancorpSouth has the discretion to pay a transaction even though you may currently not have enough funds in your account - saving you from the inconvenience and possible embarrassment of having your transaction denied.

Changes

Due to regulatory changes, beginning August 15, 2010, banks will no longer have the discretion to authorize overdrafts caused by ATM and everyday (non-recurring) debit card transactions on consumer accounts unless the customer specifically requests it by opting in to that service. If you would like your Overdraft Payment Service to continue to include these transactions, it is essential that you opt in. If you do not opt in to Overdraft Payment Service for these transactions, it will automatically go away on August 15.

How do I Continue the Overdraft Payment Service for These Transactions?

To continue your Overdraft Payment Service for ATM and everyday debit card transactions, simply opt in using the enclosed form titled "What You Need to Know about Overdrafts and Overdraft Fees," by visiting our special secure website, or by calling our InfoLine at 888-797-7711.

*You will need to opt in separately for **each** checking account with a debit or ATM card for your Overdraft Payment Service to continue for these transactions.*

More Information?

To receive additional information regarding the Overdraft Payment Service changes and money management, please visit bancorpsouth.com/overdrafts, call us at 888-797-7711, or visit your nearest BancorpSouth location.

Sincerely,

BancorpSouth

*Note: Since you will need to opt in separately for **each** checking account with a debit or ATM card for your Overdraft Payment Service to continue for these transactions, you could receive multiple versions of this mailer in which you will need to respond if you would like to opt-in. Your checking account number has been abbreviated for your privacy.*



Right Where You Are™

What You Need to Know About Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your consumer 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 the overdraft protection plans listed below, which may be less expensive than our standard overdraft practices.
 - Credit Card Overdraft Protection
 - Equity Credit Line Overdraft Protection
 - Overdraft Protection linked to your Savings or Checking Account

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
- Automatic bill payments

Beginning August 15, 2010, we do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday (non-recurring) 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 BancorpSouth pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of \$35 each time we pay an overdraft.
- Also, if your account is overdrawn for 10 or more consecutive days, we will charge an additional Continuous Overdraft Fee of \$25 on the 10th consecutive day your account continues to be in overdraft.
- There is no limit on the total fees we can charge you for overdrawing your account.

• **What if I want BancorpSouth to authorize and pay overdrafts on my ATM and everyday (non-recurring) debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday (non-recurring) debit card transactions, **complete the form below and mail** it to us in the enclosed postage paid return envelope, visit our secure website at www.bancorpsouth.com/opt-in, or **call 1-888-797-7711**.

If you do not authorize BancorpSouth to pay overdrafts on your ATM and everyday (non-recurring) debit card transactions, then those transactions will be declined beginning **AUGUST 15, 2010**.

Your Security ID for this Account Update U6M-PRX-3Q2P

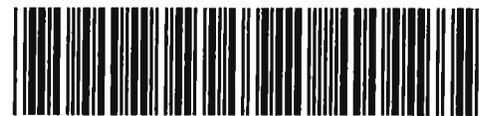
For Account Ending 537

I want BancorpSouth to authorize and pay overdrafts on my ATM and everyday debit card transactions.

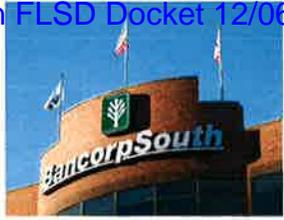
Printed Name: _____

Date: / /

Your Signature:



U6MPRX3Q2P



BancorpSouth, Right Where You Are.

Account Information Statement

This disclosure of fees and charges applies to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line. Bold text in the following indicates changes from the last edition of the Account Information Statement.

NON-INTEREST BEARING CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free Internet Banking, online statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking and then sign up for Bill Pay. It is not required that you have Internet Banking or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... it's "Free" through age 24.

Second Chance Checking*

Second Chance Checking is a special checking account for those individuals who may not have a perfect check-writing history with ChexSystems. (If you've ever had a checking account that was overdrawn when it was closed or have written bad checks in the past, your name may appear on the national ChexSystems list used by banks to approve individuals for checking accounts.) BancorpSouth doesn't approve everyone for a Second Chance Checking account, only those individuals that don't have a significant ChexSystems history.

Second Chance Checking helps you to build your good check writing history and work toward a standard BancorpSouth checking account - many without a monthly fee. If your account is in good standing after one year (no overdrafts or bad checks), you may request a standard BancorpSouth checking account.

Second Chance Checking gives you unlimited check-writing privileges with a standard monthly service charge and is subject to BancorpSouth's standard deposit policies and fees and may be closed anytime for any reason of delinquency (bad check writing, overdrafts, etc.) or fraud.

Monthly service charge regardless of balance\$6.99

*Accounts receive a monthly statement. Check images remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

Performance Checking

Performance Checking is our special rate bonus checking account which earns a Bonus Rate on your balance from \$0-\$30,000 and special ATM benefits when you meet each of the following 4 requirements during your statement period on your Performance Checking account: 1. Have at least 1 ACH debit or credit; 2. Have at least 12 debit card purchase transactions; 3. Be enrolled in online statement; 4. Be enrolled in Internet Banking.

If you meet all 4 of the requirements during a statement period, then your Performance Checking account balance from \$0 to \$30,000 will earn a Bonus Rate Annual Percentage Yield (APY) and that portion of your Performance Checking account balance in excess of \$30,000 will earn a Standard Rate APY. Additionally, if you meet all 4 of the requirements at all times during a statement period, then at the end of each statement period, for the first 5 ATM transactions you make at a non-BancorpSouth ATM during that period, we will refund the \$1.50 non-BancorpSouth ATM fee and will credit your account an additional \$2.00 against charges imposed by the owner of the non-BancorpSouth ATM (a total of \$3.50 in refunds and credits for the first 5 such transactions during the statement period). ATM fee refunds and credits will never exceed \$17.50 in any statement period. If you do not meet all 4 of these requirements at all times during the statement period, then you will earn the Standard Rate on all balances. Personal accounts only. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit	\$50.00
Unlimited Deposits and Withdrawals	
No minimum balance or monthly service charge	

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

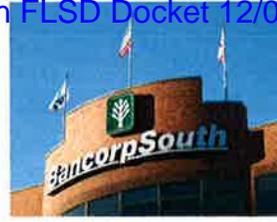
Minimum opening deposit.....	\$50.00
Monthly Service Charge with a minimum daily ledger balance of:	
\$500.00 or more	NONE
Below \$500.00	\$8.00

Interest Plus Checking

The Interest Plus Checking account is a tiered-rate checking account.

The interest rate tiers are as follows:

Balances between \$0-\$4,999
Balances between \$5,000-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances \$100,000 and above



BancorpSouth, Right Where You Are.

Account Information Statement - continued

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time and is available for early withdrawal.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$10.00

Monthly statements are itemized and include imaged checks.

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$9,999
- Balances between \$10,000-\$24,999
- Balances between \$25,000-\$49,999
- Balances between \$50,000-\$99,999
- Balances between \$100,000-\$149,999
- Balances between \$150,000-\$499,999
- Balances \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Minimum balance	\$10,000.00
Monthly service charge with a balance of:	
\$10,000.00 or more	NONE
Below \$10,000.00	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks. A BancorpSouth checking account is required to open this account.

Personal Money Market

The Personal Money Market account is a tiered-rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$2,499
- Balances between \$2,500-\$4,999
- Balances \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE

Below \$1,000.00\$10.00
There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks.

Classic Savings

Interest is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$50.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Select Savings Account

The Select Savings account earns interest at a rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is available for businesses.

Minimum opening deposit	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$15.00

Additional information and fees for Classic and Select Savings Accounts:

Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Performance Savings

Performance Savings is our special rate bonus savings account which earns a Bonus Rate on your entire balance when you meet each of the following requirements during your interest cycle on your Performance Savings account:

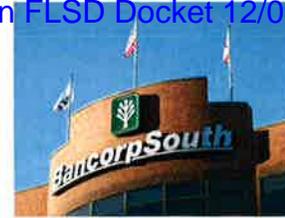
1. Transfer at least \$50 into your Performance Savings account each interest cycle electronically via ACH or Internet Banking Transfer.
2. Combine your Performance Savings statement with your BancorpSouth Checking account statement (you will no longer receive a separate statement for your Performance Savings account). If you meet both the requirements above during your statement period, your entire balance for that interest cycle will earn the Bonus Rate Annual Percentage Yield (APY). Performance Savings not only pays you a Bonus Rate, but also helps you save with the \$50 per interest cycle transfer requirement. A Performance Checking account is required to open as part of our "Performance Banking" package of services. Interest is paid monthly on the collected balance in the account using the daily balance method of interest calculation. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit.....	\$50.00
Minimum monthly balance	\$50.00
Monthly service charge if balance falls below minimum	\$2.50

There will be a \$5.00 charge for each withdrawal in excess of six during the monthly interest cycle.

Christmas Club

Christmas Club accounts earn interest at a rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to



BancorpSouth, Right Where You Are.

Account Information Statement - continued

you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES

Check Printing Charges	Charges will vary based on check design
Official Checks	\$6.00
Each Overdraft (OD) Item	\$35.00
Each Insufficient (NSF) Funds Item	\$35.00
Continuous Overdraft Fee	\$25.00
for each period of ten (10) days or longer that your account is continuously in overdraft, charged on the tenth (10th) day	
Overdraft Equity Credit Line Fee	\$7.50 per transfer
Overdraft Transfer Fee from Credit Card	See your Cardholder Agreement
Overdraft Transfer Fee from Eligible Deposit Account	\$7.50 per transfer
Each Stop Payment	\$35.00
Each ACH Stop Payment of Future Items	\$35.00
and then a \$5.00 monthly charge for each month after the sixth month in which stop payment remains in effect	
Each Returned Deposit Item	\$7.00
Each Returned Check Redeposited	\$3.00
Each Returned Check Special Handling	\$7.50
Each Deposit Correction	\$3.00
Special Statement	\$7.50
Debit Card Replacement Fee	\$5.00
Research Fees:	
Research Per Hour	\$20.00
Photocopies (each)	\$1.00
Collection Item Fee	the cost of processing the collection letter with a \$20 minimum.
Dormant Checking Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
Dormant Savings Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
90 Day Account Closure Fee	\$25.00
(Fee charged on checking accounts closed within 90 days of opening.)	
Wire Transfer Fees:	
Outgoing	\$15.00
Incoming	\$12.00
Foreign	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine	NO CHARGE
Assisted by branch or InfoLine personnel	\$3.00

Safe Deposit Box Drilling Fee - Missouri	\$85.00
All other states	\$75.00
Legal Processing	Up to \$125.00
(see Other Important Information section)	

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including any overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

Overdraft Payment Service

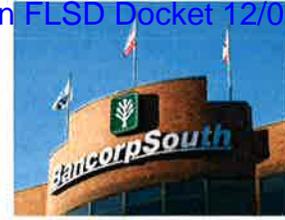
BancorpSouth's Overdraft Payment Service is a service whereby we determine whether to pay a Transaction in overdraft. This determination is strictly discretionary with us. Our Overdraft Payment Service is not a contract or agreement with you. We are not required to pay any Transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. We use a variety of factors in determining whether to pay a Transaction in overdraft, including, but not necessarily limited to, how long your account has been open, how many times and in what amounts your account has been previously overdrawn, how much money you have in your account on average, whether your account is or has been subject to garnishment or other legal action, and whether you have defaulted on any agreements with us (including loan agreements). You may remove your account from our Overdraft Payment Service, in which case we will refuse to pay most Transactions drawn against insufficient funds. Removing your account from our Overdraft Payment Service does not guarantee that your account cannot be overdrawn. For example, certain Transactions such as pre-authorized electronic debits and bank fees may continue to be paid from your account and may cause your account to be overdrawn. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about removing your account from our Overdraft Payment Service.

Overdraft-related Fees

Certain fees apply to our Overdraft Payment Service and to accounts which otherwise become overdrawn. If we decide to pay a Transaction in overdraft, you will be charged an Overdraft (OD) Item fee for each such Transaction. If we decide not to pay a Transaction into overdraft, you will be charged an Insufficient Funds (NSF) Item fee for each refused Transaction. If your account remains in overdraft for ten (10) consecutive days, then on the tenth (10th) day you will be charged a Continuous Overdraft fee. Only one Continuous Overdraft fee will be charged for each continuous period of overdraft of ten (10) days or more, regardless of how long such period continues. There is no limit to the amount of Overdraft Item, Insufficient Funds Item or Continuous Overdraft fees (collectively, "Overdraft-related Fees") which you may incur.

Order of Payment

If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or any other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may decide to pay any or all of them in any order we choose. When we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for Transactions may result in greater Overdraft-related Fees than if



BancorpSouth, Right Where You Are.

Account Information Statement - continued

we had chosen to pay them in some other order or had chosen not to pay them. We may also choose to first pay Transactions which are payable to BancorpSouth and our affiliates.

Avoiding Overdraft-related Fees

The best way to avoid Overdraft-related Fees is to manage your account so that you do not overdraw it. Otherwise, you may avoid Overdraft-related Fees through one of the Overdraft Protection products offered by BancorpSouth. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard® or VISA® credit card for cash advances in the total amount of Transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such Transactions, up to the available cash advance limit of your credit card. Credit Card Overdraft Protection transactions are subject to all of the rules and finance charge provisions applicable to cash advances under the Cardholder Agreement. You may also avoid Overdraft-related Fees by establishing a BancorpSouth Equity Credit Line, which is a line of credit. This form of Overdraft Protection works by charging your Equity Credit Line in the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available credit limit of your Equity Credit Line. An Overdraft Equity Credit Line fee and interest charges will be charged to your Equity Credit Line in accordance with the terms of your Equity Credit Line agreement. You may also avoid Overdraft-related Fees by linking your account to another checking or savings account you have with BancorpSouth. This form of Overdraft Protection works by debiting from your other account the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available balance of your other account. A transfer fee will be charged. It is still possible for your account to become overdrawn and to incur Overdraft-related Fees even if you use an Overdraft Protection product, such as when your credit card or Equity Credit Line reaches its applicable limit or the available balance of your linked account is depleted and you continue to make Transactions on your account. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about our Overdraft Protection products. Also, ask a customer service representative for a copy of our flier, "How to Avoid Paying Bank Fees."

MasterCard® Debit Card

BancorpSouth MasterCard® Debit Card is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterCard® Debit Card is good for cash purchases anywhere debit MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterCard® Debit Card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterCard® Debit Card Fee NO CHARGE
 There is a fee of \$1.50 per transaction when you use your MasterCard® Debit Card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterCard® Debit Card transaction made at its ATM. There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® Debit Card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. dollars, the rate used for converting the transaction to U.S. dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

Internet Banking is free with any personal BancorpSouth checking or Money Market account. Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for Internet Banking if you have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking, and then sign up for Bill Pay through Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking Card Fee \$1.00 per month
 There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit.

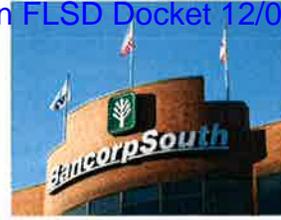
Minimum opening deposit \$1,000.00

Plus Package

The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.



BancorpSouth, Right Where You Are.

Account Information Statement - continued

- Electronic debits such as Automated Teller Machine and MasterCard® Debit Card along with InfoLine transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.
- You may not use your account in connection with any business of placing, receiving or otherwise knowingly transmitting bets or wagers by any means which involves the use, at least in part, of the internet, or for any other transaction which is prohibited by Federal Reserve Regulation GG.

Effective Date: May 10, 2010

BancorpSouth
Family of Companies
Affiliate Marketing Notice
Your Choice to Limit Marketing

The BancorpSouth family of companies [BancorpSouth Bank; BancorpSouth Investments Services, Inc.; BancorpSouth Insurance Services, Inc. (including its Stewart Sneed Hewes; Wright & Percy; Ramsey, Krug, Farrell, & Lensing; SMI Group; and JMG/ic divisions)] is providing this notice.

Federal law gives you the right to limit some but not all marketing from the BancorpSouth companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the BancorpSouth companies.

You may limit the BancorpSouth companies, such as BancorpSouth Bank credit card, BancorpSouth Investments Services, Inc. securities, and BancorpSouth Insurance Services, Inc., insurance affiliates (including its Stewart Sneed Hewes; Wright & Percy; Ramsey, Krug, Farrell, & Lensing; SMI Group; and JMG/ic divisions), from marketing their products or services to you based on your personal information that they receive from other BancorpSouth companies. This information includes your income, your account history, and your credit score.

Your choice to limit marketing offers from the BancorpSouth family of companies will apply until you tell us to change your choice.

To limit marketing offers, contact us:

- By telephone: 1-888-797-7711
- By mail: Check the box and complete the form below, and send the form to:
BancorpSouth
2910 W. Jackson Street
Tupelo, MS 38801

Do not allow any company in the BancorpSouth family of companies to use my personal information to market to me.

Name _____

Street Address _____

City, State, Zip _____

Account Numbers _____

Signature _____



IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT

Substitute Checks and Your Rights

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim, unless we earlier determine that your claim is not valid.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at 1-888-797-7711 or visit your local BancorpSouth office. We must receive your claim within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances. We will require your claim to be in writing. When you contact or visit us about your claim, we will provide you with a claim form. You may return your completed claim form to any BancorpSouth office. We must receive your written claim within 10 business days of the date you first made any oral claim.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss and an explanation of how you calculated the amount;
- An explanation of why the substitute check you received is insufficient, or why you need the original check or a better copy, to confirm that you suffered a loss; and
- A copy of the substitute check and the following information to help us identify the substitute check: your account number, the check number, the date of the check, the name of the person to whom the check is written, and the amount of the check.

BANCORPSOUTH'S RESPONSIBLE USE AND PROTECTION OF CUSTOMER INFORMATION: OUR PRIVACY PRINCIPLES
(See also the separate Affiliate Marketing Notice)

The Family of



BancorpSouth

Companies

(BancorpSouth Bank, BancorpSouth Investments Services, Inc., BancorpSouth Insurance Services, Inc., including its Stewart Sneed Hewes; Wright & Percy; Ramsey, Krug, Farrell, & Lensing; SMI Group; and JMG/ic divisions)

Our Commitment

We want you to understand our long-standing commitment to personal privacy in our use of customer information. As we move forward with new products and services in an era of rapid technological and market changes, we will continue to maintain our dedication to assuring that customer information is properly used and appropriately safeguarded. For these reasons, we have developed and adopted these *Privacy Principles*.

Our Goal

BancorpSouth's goal is to serve you as conveniently and effectively as possible and with the recognition that your relationship with BancorpSouth should always be treated with appropriate confidentiality. With BancorpSouth's Privacy Principles, we are confident you will agree that privacy and confidentiality remain guiding principles upon which BancorpSouth's services are based.

Our Policy Statement

BancorpSouth will take reasonable steps to protect the privacy of customer information. Our customers are protected not only by state and federal laws, but also by BancorpSouth's commitment to them. Current marketing practices and ever-changing technology have increased the amount of customer information that is collected and shared today. BancorpSouth is sensitive to customer concerns about the impact these developments might have on their privacy and BancorpSouth desires that our customers maintain confidence that their relationships with BancorpSouth are treated with appropriate confidentiality.

We will limit the collection and use of information about our customers to that which is necessary to administer our business, provide superior service, and extend offers that we believe will be of interest to our customers. This means we will use such information to help us identify and mitigate potential risks or loss to BancorpSouth and help identify additional products or services which we believe customers might want to know about.

As more fully explained below, we are lawfully allowed to share certain information with our affiliated companies and with companies with which we have joint marketing arrangements even if you request that we limit the sharing of other information. It is our policy to share the allowable information among our affiliated companies and joint marketing entities to the fullest extent permitted by law.

The Principles

Information Collection and Accuracy: Information about customers is accumulated from a variety of sources. Some information is provided to BancorpSouth directly by customers. Other data is developed by BancorpSouth as a result of providing a product or service to a customer. Still other information is obtained from outside sources. We will employ reasonable measures to ensure the accuracy, timeliness and completeness of our customer information. If we become aware of inaccuracies in our records, we will take steps promptly to make appropriate corrections. [Customers should notify us if they receive information regarding a BancorpSouth relationship that they believe to be inaccurate.]

We may collect "nonpublic personal information" which is information about you that we obtain in connection with providing a financial product or service to you. Examples include information regarding your account balance, payment history and overdraft history. Nonpublic information about you may be collected from the following sources:

- Information we receive from you on applications or other loan, policy, claim and account documents and forms, such as your name, address, assets and income, beneficiaries, and coverage selections or through our communications with you;
- Information about or from your transactions with us, our affiliates or others, such as your account balances, account activity, payment history, deposit history, financial benefits, parties to transactions, debit or credit card usage, insurance policy histories and coverages, and premium and claims information;
- Information we receive from third parties, including motor vehicle reports and claims histories, and information received from consumer reporting agencies ("credit bureaus"), such as your payment or credit history.

- Information we obtain to verify something you tell us in connection with an application or transaction with us, such as balances, employment, driving records, credit, and other relationships.

[For specific and appropriate products and services only, for example, health or life insurance, limited and additionally restricted nonpublic personal information may also include personal health information such as medical histories and records, and information about your habits, (such as smoking) and about an illness, disability or injury. Such personal health information will only be disclosed upon proper written authorization or as otherwise permitted or required by law. (See the Medical Information Section below.)]

Our Use, Disclosure, and Sharing of Customer Information

Under the Gramm-Leach-Bliley Act and Regulations: We may disclose any of the kinds of "nonpublic personal information" (as defined and listed above) about you. We may disclose nonpublic personal information about you to our "affiliates," that is, companies related to us by common control or ownership (our "corporate family").

We also are permitted under law to disclose nonpublic personal information about you to "nonaffiliated third parties" in certain circumstances. For example, we may disclose nonpublic personal information about you to third parties to assist us in servicing your loan or account with us, to government entities in response to subpoenas, and to credit bureaus. In addition, we may disclose any of the kinds of "nonpublic information" (as defined above) to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing arrangements.

In addition to the allowable disclosures described above, we may disclose nonpublic information about you to the following types of "nonaffiliated third parties," that is, third parties that are not members of our corporate family but with which we may have or develop business relationships:

- Financial service providers, such as credit card affiliated servicers, mortgage bankers, securities firms, broker-dealers, adjusters, underwriters, insurance companies, administrators and agents; and non-financial companies, such as retailers and direct marketers.

If you prefer that we not disclose this other nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). **See the Affiliate Sharing/Nonaffiliated Third Party section below. See also the separate Affiliate Marketing Notice required by the Fair and Accurate Credit Transactions Act (FACT Act) and regulations thereunder.**

Under the Fair Credit Reporting Act: Under certain circumstances our customers are protected by the Fair Credit Reporting Act. For example, for the purposes of prescreening business prospects, we may only use consumer reports when a customer or prospective customer has authorized a consumer reporting agency to furnish us a report or when making a customer or prospective customer a firm offer of credit or insurance. While you may not prohibit BancorpSouth from sharing your loan and deposit account history with consumer reporting agencies, you may request that consumer reporting agencies not provide information about you to companies wishing to extend

"pre-approved" offers to you for their products or services. You may make this request by calling the "Opt Out Request Line" at 1-888-5OPT-OUT (1-888-567-8688).

We must also notify an applicant if we decline any application made by them and have used a consumer report during the processing of the application. If this occurs, even if the report was not the basis for the decision to decline the application, we will provide the applicant with the name and address of the reporting agency. Customers are entitled to obtain free copies of credit reports from the reporting agencies and have such reports corrected by the agency concerned if those reports contain inaccurate information.

Sometimes, as in the case of insurance, we are merely an agent for the carrier that actually provides the product. In such cases, any decision to decline an application for insurance will be made by the carrier, or another entity affiliated with the carrier, not by BancorpSouth, and the applicant's right to know whether a consumer report was used or why the application might have been declined will apply directly to the carrier, not BancorpSouth. In that situation, BancorpSouth will tell the applicant whom to contact in order to ask questions or obtain more information.

BancorpSouth and its family of organizations, subsidiaries, divisions, departments, and companies are permitted to share within the BancorpSouth organization information concerning a customer's account history and experiences with BancorpSouth. We may also share among the entities, subsidiaries, divisions, departments, and companies that comprise the BancorpSouth organization and among its divisions:

- Information someone has given us as part of an application for one of our products or services, or information such as income information and credit history that we have received from a consumer reporting agency or other third party which is used to determine your eligibility for credit or for some other product or service (hereafter

"Creditworthiness/product-worthiness information").

While it may result in customers not receiving product or service information of interest to them, we will respect anyone's wish that we not share this type of information. You may therefore direct us not to disclose to our affiliates this creditworthiness/product-worthiness information that does not relate solely to BancorpSouth's or its affiliates' experiences or transactions with you or your account. **See the Affiliate Sharing/Nonaffiliated Third Party section below. See also the separate Affiliate Marketing Notice required by the Fair and Accurate Credit Transactions Act (FACT Act) and regulations thereunder.**

Joint Accounts: If you share an account with someone else, for example, a joint checking or brokerage account, as co-maker on a loan, or if named on an insurance policy because of a joint interest in property, please share these privacy policies and principles (and any other notices and disclosures we make to you) so that each person with a relationship to your account(s) is aware of these policies, notices, and disclosures, and the information sharing options available. If you have a joint account, an opt out choice made

by one party to an account will affect all parties to an account.

Additional Information as to Outsourcers and Outside Vendors: Occasionally, BancorpSouth makes a decision to sell a particular line of business (for example, mortgage servicing rights). Usually, an integral part of that business is its customer database. BancorpSouth reserves the right, in such circumstances, to transfer ownership of such customer databases or other information to the purchaser.

Customers should also be aware that third parties with which BancorpSouth might have business relationships may also have access to customer information that has been obtained independently of BancorpSouth. Mailings and solicitations based on such information are not within BancorpSouth's control.

With Consumer Reporting Agencies & Other Companies: We may exchange information about our customers with reputable information reporting agencies, financial institutions, and merchants, in accordance with standard industry practice, so they can verify the existence and condition of customers' accounts.

With the Government: State and federal laws impose certain mandatory disclosures of customer information by financial institutions. We must comply with laws requiring mandatory production or disclosure. For example, the Bank Secrecy Act, Internal Revenue Code, Right to Financial Privacy Act, the Anti-Money Laundering Act, the Welfare Reform Act and various other laws and regulations require us or our contractors, under certain circumstances, to provide certain customer information to government agencies. We may be prohibited by law from informing you that such disclosure has been required or requested or that such disclosure is being made by us. [Federal law provides a "safe harbor" for a financial institution and its employees that provides complete immunity from civil liability for the reporting of known or suspected criminal offenses or suspicious activity by use of approved forms or by reporting through other means in accordance with applicable agency regulations.]

With Third Party Litigants: If you are involved in a legal proceeding, (for example, as a party or as a witness), both federal and state law provide parties to the litigation the right to compel the production of records and information from banks and other third party record keepers in certain situations. We will therefore disclose customer information to third party litigants when we are required to do so by lawful judicial process or by court order. In such circumstances, the parties to such proceeding have the obligation to comply with any notice requirements. BancorpSouth has no such notice obligation in these cases and will not therefore undertake to notify you.

Medical Information: In some situations, a person might disclose or authorize the disclosure of medical information as part of an application for a specific product, such as health or life insurance. BancorpSouth recognizes that when consumers provide medical information for such a specific purpose, they do not wish it to be used for other purposes, such as for marketing or in making a credit decision. We will therefore share such medical information only with those who need to know this information in order to process the application or to provide the services you have requested or initiated. We will not allow this information to be used elsewhere within BancorpSouth for any other purpose.

Our Employees: BancorpSouth employees are informed of their responsibility to protect confidential customer information and are bound by these Privacy Principles. Employees are governed by a code of conduct that includes the responsibility to protect the confidentiality of customers' financial and other personal information. Only employees actively engaged in the discharge of their assigned duties are authorized to access or use customer information.

Our Security Safeguards: We maintain security standards and procedures to help prevent unauthorized access to confidential information about you. We update and test our technology to improve the protection of our information about you and to assure the integrity of our information. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information. We help protect customers against, and educate customers about how to protect themselves from, criminal use of their information. We use a combination of safeguards to protect customer information, such as employee training, rigorous security standards, encryption and fraud detection. We work with law enforcement officials to pursue individuals who fraudulently use information.

Your Use of Our Website and Internet Banking

Our online banking products and our user-friendly Internet website "http://www.bancorpsouth.com" invite customers to provide nonpublic personal information about themselves through information request screens from the privacy of their own personal computer. BancorpSouth's internal security measures safeguard your personal information submitted by computer in several ways, including for example, encryption, passcodes and other safety features to ensure that online applications and the financial information you access through online banking are safe and secure.

To enhance customer service, BancorpSouth may occasionally use a "cookie" on our website which is a piece of information that a web server can store on your PC and retrieve later during a browser session only. Cookies do not contain your online banking password nor do they contain any information that will enable anyone to contact you via telephone, e-mail or regular mail. (For more information on the use of our website, please see the User Information and Privacy pages at where we have posted a link which is clearly marked as such.)

Your Options on Information Sharing

One of the benefits of doing business with BancorpSouth is that we are a complete financial services institution. For example, sometimes customers do not realize when they get their mortgage with us that they can also have their new home insured through BancorpSouth Insurance Services. This is just one example of the variety of services we offer. Many customers have said that dealing with one company has made achieving their financial goals easier. We therefore hope you will consider consenting to our information sharing, and we may on occasion ask you to give us your consent. Yet while BancorpSouth takes all the necessary steps to maintain your privacy in this process, we, of course, give you the option to decline

this level of service, as we recognize individual choice is what matters most.

You therefore have the right to ask BancorpSouth to limit the sharing of information about you in the following areas and ways.

Affiliate Sharing/Nonaffiliated Third Party. See also the separate Affiliate Marketing Notice required by the Fair and Accurate Credit Transactions Act (FACT Act) and regulations thereunder: Other than disclosures permitted by law, you may ask us not to share nonpublic information about you with nonaffiliated third parties ("opt out" of nonaffiliated third-party marketing) and you may also limit certain information shared about you within the BancorpSouth family of banks and companies ("opt out" of affiliate sharing). As does this policy, our annual and initial notices to you will provide a convenient form for you to complete and return to us in order to opt-out. Otherwise, call 1-888-797-7711 or write to BancorpSouth Customer Service Center,

Attn: Customer Privacy, 2910 West Jackson Street, Tupelo, Mississippi

38801, and we will send you an opt out form. To help us process your request for an opt out form, please include your name, address, telephone number, and the appropriate account or policy number(s). Please expect to allow us a reasonable period of time to update our marketing database once we receive your opt out request.

If you select opt out of affiliate sharing, you make the decision that you do not want information that has been provided to us on applications or information that we obtained from outside sources, such as consumer reporting agencies, which is used to determine creditworthiness or product worthiness shared among the BancorpSouth family of banks and companies, (however, we will continue to share other information about you with our affiliates as permitted by law, for example, information about specific transactions and experiences with a customer will still be shared with affiliates and others as permitted by the Fair Credit Reporting Act). Please note however, that each company within the BancorpSouth family of companies will continue to contact its clients and customers with offers of its own products and services. You may therefore continue to receive marketing messages via your statement(s), as well as telephone and direct mail offers, from BancorpSouth companies.

These Privacy Principles apply to our consumer customers who have a continuing relationship with us and may be applicable to former customers. These principles are currently applicable to BancorpSouth banks and the subsidiaries, affiliates, divisions, departments and companies making up the BancorpSouth family in the conduct of their consumer business. We may change these principles, along with related provisions, at any time.

YOUR OPTIONS ON OUR SHARING OF CERTAIN INFORMATION

Accompanying this notice, we have explained our policy and your rights concerning the disclosure of certain information. If you wish to exercise your right to ask us to withhold the sharing of certain information, please let us know in writing by filling out the form below and mailing it back to us. You must fill this form out completely for us to honor your request. Please mail this form to: BancorpSouth, Attn: Customer Privacy, 2910 W. Jackson Street, Tupelo, MS 38801. We will process your request within 4 to 6 weeks. Your business, and trust in us, is greatly appreciated.

I wish to exercise my opt out of non-affiliated third-party marketing as described in BancorpSouth's Privacy Policy.

I wish to exercise my opt out of affiliate sharing as described in BancorpSouth's Privacy Policy.

Name _____

Address _____

City, State and ZIP Code _____

Social Security Number _____

Signature and Date _____ / _____

Account Number/Account Type* _____ / _____

Account Number/Account Type* _____ / _____

Account Number/Account Type* _____ / _____

*(e.g., checking, savings, mortgage, insurance, etc.)

Use a separate sheet if additional space is needed.

See also the separate Affiliate Marketing Notice required by the Fair and Accurate Credit Transactions Act (FACT Act) and regulations thereunder.



IMPORTANT FACTS ABOUT ELECTRONIC FUND TRANSFER SERVICES
REGULATION E DISCLOSURE

BancorpSouth 24-Hour Banking Card and MasterCard Debit Card Disclosure and Customer Agreement Pursuant To Electronic Funds Transfer Act and Regulation E

The purpose of this notice is to acquaint you with the electronic fund transfer services offered by BancorpSouth Bank to make certain disclosures relative to these services, which are required by law.

I. BANCORPSOUTH 24-HOUR BANKING CARD/MASTERCARD DEBIT CARD. Each BancorpSouth 24-Hour Banking/MasterCard Debit Card (hereinafter referred to for convenience as "Card") issued to you pursuant to the Agreement is our property and may be canceled or repossessed by us at any time, with or without cause. You must surrender to us on demand each Card issued to you. If you permit or authorize other persons to use your Card and Personal Identification Number (PIN), you assume liability only for the resulting transactions. To guard against anyone making a transaction that you have not authorized, you should take all reasonable precautions to prevent any other person from learning your Personal Identification Number (PIN).

II. TYPES OF TRANSACTIONS. You may use your Card to access your account(s) through our ATMs to:

- (1) Withdraw cash from your checking, savings or personal money market account.
- (2) Inquire as to the available balance of your checking, savings or personal money market account.
- (3) Make deposits to your checking, savings or personal money market account at most of our locations.
- (4) Transfer funds between your checking, savings or personal money market accounts whenever you request.
- (5) Make payments on an Installment Loan or on any Visa or MasterCard account you have with us by enclosing a check or cash at most locations.

You may use your Card to access your account(s) with us through a Pulse or Cirrus location to:

- (1) Withdraw cash from your checking, savings, or personal money market account.
- (2) Transfer funds between your checking, savings, or personal money market account.
- (3) Make balance inquiries on your checking, savings or personal money market account.

You may also use your MasterCard Debit Card to:

- (1) Withdraw cash from your primary checking account at a teller window at any of our locations or other MasterCard participating bank.
- (2) Purchase goods or services with funds from your primary checking account with your MasterCard Debit Card at participating MasterCard merchants.
- (3) Pay bills directly by telephone from your checking, savings, or personal money market account in the amounts² and on the days you request.

You may also use your MasterCard Debit Card and personal identification number that you pre-selected when ordering your MasterCard Debit Card to receive cash advances.

Some of these services may not be available to you at all EFT terminals. If you have more than one account with us, some of these services may not be available for each account. On each processing day, you may withdraw from automated teller machines up to a maximum of \$400.00 (or your available balance, if it's less than \$400.00) per BancorpSouth 24-Hour Banking card, and by use of point-of-sale terminals you may buy goods or services up to a maximum of \$10,000.00 or your available balance, whichever is less. Every calendar day is a processing day except that Saturday, Sunday and Monday are treated as a single processing day. In all cases, you agree to be responsible for all transfers authorized by you from which you receive benefit.

Electronic check conversion. You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:

- (1) Pay for purchases.
- (2) Pay bills

III. PREAUTHORIZED DIRECT DEPOSITS. Many payments made by governmental agencies, such as Social Security and Veterans Administration payments, can be deposited directly into your checking, savings or personal money market account; however, you must first sign an authorization for such service. If employed by a company that contracts with a bank to provide direct payroll deposits, you may agree to have your salary deposited directly to your account upon signing an agreement with your employer to receive this service.

IV. PREAUTHORIZED AUTOMATIC DEBITS. You may authorize third parties to debit or make withdrawals from your checking account. This is usually done for the purpose of paying recurring monthly bills such as insurance premiums; however you must sign a written authorization with each party who will be making such withdrawals to receive this service.

V. CHARGES FOR ELECTRONIC TRANSFERS. For Automated Teller Machine (ATM) transactions or other electronic fund transfers to or from your deposit accounts, conducted at our ATM, there are no specific charges other than the usual and normal service charges for account maintenance. However, for each withdrawal and balance inquiry that you make using an ATM other than our ATM, a fee will be charged according to the following schedule:

BANCORPSOUTH 24-HOUR BANKING CARDS

Monthly Fee - \$1.00
Withdrawals - \$1.50
Inquiries - \$1.50
Replacement Cards - \$5.00

MASTERCARD DEBIT CARDS

Annual Fee – No Charge
Withdrawals - \$1.50
Inquiries - \$1.50
Point of Sale Transactions – No Charge
Replacement Cards - \$5.00

Upon written request, copies of sales drafts, photographs and other documentary evidence of transactions on your MasterCard Debit Card account are available for income tax and other purposes at a reasonable cost. We will not charge you for documentation obtained in connection with a good faith assertion of error in connection with cards. Copies of point-of-sale drafts may be obtained for a fee of \$10.00 per item.

If your MasterCard Debit Card is canceled for any reason, and you fail to return your MasterCard Debit Card to us within 30 days, you will be charged a \$5.00 surrender fee.

VI. CUSTOMER'S LIABILITY.

(1) GENERALLY. Tell us AT ONCE if you believe your Card has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit, if you have one). If you tell us within 2 business days after you learn of the loss or theft of your card, you can lose no more than \$50 if someone used your card without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of your Card, and we can prove we could have stopped someone from using your Card without your permission if you had told us, you could lose as much as \$500.00.

(2) UNAUTHORIZED USE DISCOVERED FROM STATEMENTS. Also, if your statement shows transfers that you did not make, including those made by card or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(3) SPECIAL NO LIABILITY RULES FOR UNAUTHORIZED USE ON MASTERCARD DEBIT CARD TRANSACTIONS AND PIN TRANSACTIONS PROCESSED BY MASTERCARD. Notwithstanding Section VI (1) above, your liability for unauthorized use of your MasterCard Debit Card will be \$0 for any MasterCard Debit Card transactions (i.e., transactions for which you sign or do not otherwise provide a PIN) or any PIN transaction processed by MasterCard (Maestro and Cirrus transactions) provided:

- (a) you report the unauthorized use as soon as possible;
 - (b) you have exercised reasonable care in safeguarding your card from risk of loss or theft;
 - (c) you have not reported two or more incidents of unauthorized use to us in the immediately preceding 12-month period; and
 - (d) your account is in good standing.
- If you do not meet these conditions and you report the unauthorized use, your liability for the unauthorized transaction will be no more than \$50.00.

VII. PROCEDURE FOR RESOLVING ERRORS. Telephone or write us at the telephone and address shown below as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on your statement or receipt.

BancorpSouth
Electronic Banking
2910 West Jackson Street
Tupelo, MS 38801
Toll Free: 1-888-797-7711 and press 1, 5

Customer Service hours are:

7:00 a.m. to 8:00 p.m. (Central Time) Monday through Friday and
7:00 a.m. to 5:00 p.m. (Central Time) Saturday

We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will

have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

VIII. BUSINESS DAYS. For purposes of these disclosures, our business days are, Monday through Friday. Holidays are excluded.

IX. DISCLOSURE OF ACCOUNT INFORMATION. We will disclose information to third parties about your account or the transfers you make:

- (1) Where it is necessary for completing transfers or
- (2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant or
- (3) In order to comply with government agency or court orders or
- (4) If you give us your written permission

X. DOCUMENTATION OF TRANSFERS.

- (A) BancorpSouth 24-Hour Banking Card/ MasterCard Debit Cards – You can get a transaction record at the time you make any transfers to or from your account using one of our ATM machines.
- (B) Preauthorized Automatic Credits - If you have arranged to have direct deposits made to your account at least every 60 days from the same person or company, you can call us at 1-888-797-7711 to find out whether or not the deposit has been made.
- (C) Periodic Statements – You will get a monthly account statement unless there are no electronic transfers in a particular month. In any case, you will get the statement at least semi-annually.

XI. CUSTOMER'S RIGHT WITH RESPECT TO PREAUTHORIZED AUTOMATIC DEBITS.

- (A) Right to Stop Payment and Procedures For Doing So. If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:
Call us at the telephone number referred to in Section VII above or write us at the address indicated in the Section VII above in time for us to receive your request three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. Our usual and normal service charge will be assessed for each stop-payment order you give.
- (B) Liability for Failure To Stop Payment Of Preauthorized Transfers. If you order us to stop one of these payments three business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.
- (C) Notice of Varying Amounts. If these regular payments may vary in amount, the person you are going to pay should tell you ten days before each payment when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you may set.

XII. BANK'S LIABILITY FOR FAILURE TO MAKE TRANSFERS. If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable for instance:

- (1) If through no fault of ours, you do not have enough money in your account to make the transfer, or
- (2) If the transfer would go over the credit limit on your overdraft line, or
- (3) If the automatic teller machine where you are making the transfer does not have enough cash,
- (4) If the EFT Terminal or processing machine was not working properly and you knew about the breakdown when you started the transfer,
- (5) If circumstances beyond our control (such as fire or flood) prevented the transfer, despite reasonable precautions that we have taken, or
- (6) If the funds in your account are subject to legal process or other encumbrance restricting the transfer, or
- (7) If we are holding uncollected funds in your account and the transfer would require the use of those funds, or
- (8) If another person or entity which is supposed to initiate the transfer, such as a life insurance company or the Social Security Administration fails to send to us the appropriate authority or information for the debit or credit, or
- (9) If delivery of data from the Federal Reserve Bank is later than the opening of business of the effective date of the preauthorized transfer.

There may be other exceptions stated in our account agreement with you.

XIII. REPORT LOST CARD, PINs OR UNAUTHORIZED TRANSFERS. If you believe your PIN or your Card has been lost or stolen or that someone transferred or may transfer money from your account without your permission, call or write us at the telephone number and address referenced in Section VII of this Agreement.

XIV. PERIODIC STATEMENTS. You will get a monthly account statement for your checking account. You will also get a monthly account statement for your savings account unless there are no transfers in a particular month. In any case, you will get the statement for your savings account at least semi-annually.

XV. OUR RIGHTS CONCERNING YOUR ACCOUNT. At any time, without advance notice, we have the right to refuse to allow you to make any one or more purchases or cash advances (regardless of amount) on your account (whether or not such purchase or cash advance exceeds any authorization limit which we may set for your account). We reserve the right to set an authorization limit on your account and/or change the terms of this Agreement at any time by mailing a written notice to you.

XVI. GOVERNING LAW. This Agreement will be construed in accordance with the law of the state of your residence if you reside in a state in which we operate a branch office; otherwise, this Agreement will be construed in accordance with Mississippi law. The terms of this Agreement will govern over any inconsistent terms in any sales draft, retail charge agreement or cash advance draft.

XVII. OUR RESPONSIBILITY. Except for our responsibility explained in this statement, we are not responsible for the acts or omissions of any merchant or other establishment, including any refusal to honor your MasterCard Debit Card.



BancorpSouth
BancorpSouth Bank ■ Tupelo, MS
Member FDIC

YOUR ABILITY TO WITHDRAW FUNDS AT BANCORPSOUTH BANK

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before our cut off time at a manned location, or before 12:00 noon at an automated teller machine, on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after our cut off time or on a day we are not open, we will consider that the deposit was made on the next business day we are open. Please verify the applicable cut off time for your banking location.

LONGER DELAYS MAY APPLY

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$100 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

FUNDS AVAILABILITY DISCLOSURE
per Regulation CC

REGCCDIS 2/26/2010

Page 1 of 2

SPECIAL RULES FOR NEW ACCOUNTS

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a US Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the tenth business day after the day of your deposit.

HOLDS ON OTHER FUNDS (CHECK CASHING)

If we cash a check for you that is drawn on another bank; we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

HOLDS ON OTHER FUNDS (OTHER ACCOUNT)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

Exhibit “C”

Attachment

Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration

Joint Guidance on Overdraft Protection Programs

February 18, 2005

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA), collectively “the Agencies,” are issuing this joint guidance concerning a service offered by insured depository institutions that is commonly referred to as “bounced-check protection” or “overdraft protection.” This credit service is sometimes offered on both consumer and small business transaction accounts as an alternative to traditional ways of covering overdrafts. This joint guidance is intended to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services, particularly those that are marketed to consumers.¹

Introduction

To protect against account overdrafts, some consumers obtain an overdraft line of credit, which is subject to the disclosure requirements of the Truth in Lending Act (TILA). If a consumer does not have an overdraft line of credit, the institution may accommodate the consumer and pay overdrafts on a discretionary, ad-hoc basis. Regardless of whether the overdraft is paid, institutions typically have imposed a fee when an overdraft occurs, often referred to as a nonsufficient funds or “NSF” fee. Over the years, this accommodation has become automated by many institutions. Historically, institutions have not promoted this accommodation. This approach has not raised significant concerns.

More recently, some depository institutions have offered “overdraft protection” programs that, unlike the discretionary accommodation traditionally provided to those lacking a line of credit or other type of overdraft service (e.g., linked accounts), are marketed to

¹ Federal credit unions are already subject to certain regulatory requirements governing the establishment and maintenance of overdraft programs. 12 CFR § 701.21(c)(3). This regulation requires a federal credit union offering an overdraft program to adopt a written policy specifying the dollar amount of overdrafts that the credit union will honor (per member and overall); the time limits for a member to either deposit funds or obtain a loan to cover an overdraft; and the amount of the fee and interest rate, if any, that the credit union will charge for honoring overdrafts. This joint guidance supplements but does not change these regulatory requirements for federal credit unions.

consumers essentially as short-term credit facilities. These marketed programs typically provide consumers with an express overdraft "limit" that applies to their accounts.

While the specific details of overdraft protection programs vary from institution to institution, and also vary over time, those currently offered by institutions incorporate some or all of the following characteristics:

- Institutions inform consumers that overdraft protection is a feature of their accounts and promote the use of the service. Institutions also may inform consumers of their aggregate dollar limit under the overdraft protection program.
- Coverage is automatic for consumers who meet the institution's criteria (e.g., account has been open a certain number of days; deposits are made regularly). Typically, the institution performs no credit underwriting.
- Overdrafts generally are paid up to the aggregate limit set by the institution for the specific class of accounts, typically \$100 to \$500.
- Many program disclosures state that payment of an overdraft is discretionary on the part of the institution, and may disclaim any legal obligation of the institution to pay any overdraft.
- The service may extend to check transactions as well as other transactions, such as withdrawals at automated teller machines (ATMs), transactions using debit cards, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, and on-line banking transactions.²
- A flat fee is charged each time the service is triggered and an overdraft item is paid. Commonly, a fee in the same amount would be charged even if the overdraft item was not paid. A daily fee also may apply for each day the account remains overdrawn.
- Some institutions offer closed-end loans to consumers who do not bring their accounts to a positive balance within a specified time period. These repayment plans allow consumers to repay their overdrafts and fees in installments.

Concerns

Aspects of the marketing, disclosure, and implementation of some overdraft protection programs, intended essentially as short-term credit facilities, are of concern to the Agencies. For example, some institutions have promoted this credit service in a manner that leads consumers to believe that it is a line of credit by informing consumers that their account includes an overdraft protection limit of a specified dollar amount without clearly

² Transaction accounts at credit unions are called share draft accounts. For purposes of this joint guidance, the use of the term "check" includes share drafts.

disclosing the terms and conditions of the service, including how fees reduce overdraft protection dollar limits, and how the service differs from a line of credit.

In addition, some institutions have adopted marketing practices that appear to encourage consumers to overdraw their accounts, such as by informing consumers that the service may be used to take an advance on their next paycheck, thereby potentially increasing the institutions' credit exposure with little or no analysis of the consumer's creditworthiness. These overdraft protection programs may be promoted in a manner that leads consumers to believe that overdrafts will always be paid when, in reality, the institution reserves the right not to pay some overdrafts. Some institutions may advertise accounts with overdraft protection coverage as "free" accounts, and thereby lead consumers to believe that there are no fees associated with the account or the overdraft protection program.

Furthermore, institutions may not clearly disclose that the program may cover instances when consumers overdraw their accounts by means other than check, such as at ATMs and point-of-sale (POS) terminals. Some institutions may include overdraft protection amounts in the sum that they disclose as the consumer's account "balance" (for example, at an ATM) without clearly distinguishing the funds that are available for withdrawal without overdrawing the account. Where the institution knows that the transaction will trigger an overdraft fee, such as at a proprietary ATM, institutions also may not alert the consumer prior to the completion of the transaction to allow the consumer to cancel the transaction before the fee is triggered.

Institutions should weigh carefully the risks presented by the programs including the credit, legal, reputation, safety and soundness, and other risks. Further, institutions should carefully review their programs to ensure that marketing and other communications concerning the programs do not mislead consumers to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed, do not mislead consumers about their account balance or the costs and scope of the overdraft protection offered, and do not encourage irresponsible consumer financial behavior that potentially may increase risk to the institution.

Safety & Soundness Considerations

When overdrafts are paid, credit is extended. Overdraft protection programs may expose an institution to more credit risk (e.g., higher delinquencies and losses) than overdraft lines of credit and other traditional overdraft protection options to the extent these programs lack individual account underwriting. All overdrafts, whether or not subject to an overdraft protection program, are subject to the safety and soundness considerations contained in this section.

Institutions providing overdraft protection programs should adopt written policies and procedures adequate to address the credit, operational, and other risks associated with these types of programs. Prudent risk management practices include the establishment of express account eligibility standards and well-defined and properly documented dollar limit decision criteria. Institutions also should monitor these accounts on an ongoing

basis and be able to identify consumers who may represent an undue credit risk to the institution. Overdraft protection programs should be administered and adjusted, as needed, to ensure that credit risk remains in line with expectations. This may include, where appropriate, disqualification of a consumer from future overdraft protection. Reports sufficient to enable management to identify, measure, and manage overdraft volume, profitability, and credit performance should be provided to management on a regular basis.

Institutions also are expected to incorporate prudent risk management practices related to account repayment and suspension of overdraft protection services. These include the establishment of specific timeframes for when consumers must pay off their overdraft balances. For example, there should be established procedures for the suspension of overdraft services when the account holder no longer meets the eligibility criteria (such as when the account holder has declared bankruptcy or defaulted on another loan at the bank) as well as for when there is a lack of repayment of an overdraft. In addition, overdraft balances should generally be charged off when considered uncollectible, but no later than 60 days from the date first overdrawn.³ In some cases, an institution may allow a consumer to cover an overdraft through an extended repayment plan when the consumer is unable to bring the account to a positive balance within the required time frames. The existence of the repayment plan, however, would not extend the charge-off determination period beyond 60 days (or shorter period if applicable) as measured from the date of the overdraft. Any payments received after the account is charged off (up to the amount charged off against allowance) should be reported as a recovery. Some overdrafts are rewritten as loan obligations in accordance with an institution's loan policy and supported by a documented assessment of that consumer's ability to repay. In those instances, the charge-off timeframes described in the Federal Financial Institutions Examination Council (FFIEC) Uniform Retail Credit Classification and Account Management Policy would apply.⁴

With respect to the reporting of income and loss recognition on overdraft protection programs, institutions should follow generally accepted accounting principles (GAAP) and the instructions for the Reports of Condition and Income (Call Report), and NCUA 5300 Call Report. Overdraft balances should be reported on regulatory reports as loans. Accordingly, overdraft losses should be charged off against the allowance for loan and lease losses. The Agencies expect all institutions to adopt rigorous loss estimation processes to ensure that overdraft fee income is accurately measured. Such methods may include providing loss allowances for uncollectible fees or, alternatively, only recognizing that portion of earned fees estimated to be collectible.⁵ The procedures for estimating an adequate allowance should be documented in accordance with the Policy

³ Federal credit unions are required by regulation to establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the credit union to cover each overdraft. 12 CFR § 701.21(c)(3).

⁴ For federally insured credit unions, charge-off policy for booked loans is described in NCUA Letter to Credit Unions No. 03-CU-01, "Loan Charge-off Guidance," dated January 2003.

⁵ Institutions may charge off uncollected overdraft fees against the allowance for loan and lease losses if such fees are recorded with overdraft balances as loans and estimated credit losses on the fees are provided for in the allowance for loan and lease losses.

Statement on the Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions.⁶

If an institution advises account holders of the available amount of overdraft protection, for example, when accounts are opened or on depositors' account statements or ATM receipts, the institution should report the available amount of overdraft protection with legally binding commitments for Call Report, and NCUA 5300 Call Report purposes. These available amounts, therefore, should be reported as "unused commitments" in regulatory reports.

The Agencies also expect proper risk-based capital treatment of outstanding overdrawn balances and unused commitments.⁷ Overdraft balances should be risk-weighted according to the obligor. Under the federal banking agencies' risk-based capital guidelines, the capital charge on the unused portion of commitments generally is based on an off-balance sheet credit conversion factor and the risk weight appropriate to the obligor. In general, these guidelines provide that the unused portion of a commitment is subject to a zero percent credit conversion factor if the commitment has an original maturity of one year or less, or a 50 percent credit conversion factor if the commitment has an original maturity over one year. Under these guidelines, a zero percent conversion factor also applies to the unused portion of a "retail credit card line" or "related plan" if it is unconditionally cancelable by the institution in accordance with applicable law.⁸ The phrase "related plans" in these guidelines includes overdraft checking plans. The Agencies believe that the overdraft protection programs discussed in this joint guidance fall within the meaning of "related plans" as a type of "overdraft checking plan" for the purposes of the federal banking agencies' risk-based capital guidelines. Consequently, overdraft protection programs that are unconditionally cancelable by the institution in accordance with applicable law would qualify for a zero percent credit conversion factor.

Institutions entering into overdraft protection contracts with third-party vendors must conduct thorough due diligence reviews prior to signing a contract. The interagency guidance contained in the November 2000 Risk Management of Outsourced Technology Services outlines the Agencies' expectations for prudent practices in this area.

Legal Risks

Overdraft protection programs must comply with all applicable federal laws and regulations, some of which are outlined below. State laws also may be applicable, including usury and criminal laws, and laws on unfair or deceptive acts or practices. It is important that institutions have their overdraft protection programs reviewed by counsel

⁶ Issued by the Board, FDIC, OCC, and Office of Thrift Supervision. The NCUA provided similar guidance to credit unions in Interpretive Ruling and Policy Statement 02-3, "Allowance for Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions," 67 FR 37445, May 29, 2002.

⁷ Federally insured credit unions should calculate risk-based net worth in accordance with the rules contained in 12 CFR Part 702.

⁸ See 12 CFR Part 3, Appendix A, Section 3 (b)(5) (OCC); 12 CFR Part 208, Appendix A, Section III.D.5 (Board); and 12 CFR Part 325, Appendix A, Section II.D.5 (FDIC).

for compliance with all applicable laws prior to implementation. Further, although the guidance below outlines federal laws and regulations as of the date this joint guidance is published, applicable laws and regulations are subject to amendment. Accordingly, institutions should monitor applicable laws and regulations for revisions and to ensure that their overdraft protection programs are fully compliant.

Federal Trade Commission Act / Advertising Rules

Section 5 of the Federal Trade Commission Act (FTC Act) prohibits unfair or deceptive acts or practices.⁹ The banking agencies enforce this section pursuant to their authority in section 8 of the Federal Deposit Insurance Act, 12 U.S.C. § 1818.¹⁰ An act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. An act or practice is deceptive if, in general, it is a representation, omission, or practice that is likely to mislead a consumer acting reasonably under the circumstances, and the representation, omission, or practice is material.

In addition, the NCUA has promulgated similar rules that prohibit federally insured credit unions from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered.¹¹ These regulations are broad enough to prohibit federally insured credit unions from making any false representations to the public regarding their deposit accounts.

Overdraft protection programs may raise issues under either the FTC Act or, in connection with federally insured credit unions, the NCUA's advertising rules, depending upon how the programs are marketed and implemented. To avoid engaging in deceptive, inaccurate, misrepresentative, or unfair practices, institutions should closely review all aspects of their overdraft protection programs, especially any materials that inform consumers about the programs.

Truth in Lending Act

TILA and Regulation Z require creditors to give cost disclosures for extensions of consumer credit.¹² TILA and the regulation apply to creditors that regularly extend consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments.¹³

Under Regulation Z, fees for paying overdraft items currently are not considered finance charges if the institution has not agreed in writing to pay overdrafts.¹⁴ Even where the

⁹ 15 U.S.C. § 45.

¹⁰ See OCC Advisory Letter 2002-3 (March 2002); and joint Board and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks (March 11, 2004).

¹¹ 12 CFR § 740.2.

¹² 15 U.S.C. §§ 1601 *et seq.* TILA is implemented by Regulation Z, 12 CFR Part 226.

¹³ See 15 U.S.C. § 1602(f) and 12 CFR 226.2(a)(17). Institutions should be aware that whether a written agreement exists is a matter of state law. See, e.g., 12 CFR § 226.5.

¹⁴ See 12 CFR 226.4(c)(3). Traditional lines of credit, which generally are subject to a written agreement, do not fall under this exception.

institution agrees in writing to pay overdrafts as part of the deposit account agreement, fees assessed against a transaction account for overdraft protection services are finance charges only to the extent the fees exceed the charges imposed for paying or returning overdrafts on a similar transaction account that does not have overdraft protection.

Some financial institutions also offer overdraft repayment loans to consumers who are unable to repay their overdrafts and bring their accounts to a positive balance within a specified time period.¹⁵ These closed-end loans will trigger Regulation Z disclosures, for example, if the loan is payable by written agreement in more than four installments. Regulation Z will also be triggered where such closed-end loans are subject to a finance charge.¹⁶

Equal Credit Opportunity Act

Under the Equal Credit Opportunity Act (ECOA) and Regulation B, creditors are prohibited from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction.¹⁷ This prohibition applies to overdraft protection programs. Thus, steering or targeting certain consumers on a prohibited basis for overdraft protection programs while offering other consumers overdraft lines of credit or other more favorable credit products or overdraft services, will raise concerns under the ECOA.

In addition to the general prohibition against discrimination, the ECOA and Regulation B contain specific rules concerning procedures and notices for credit denials and other adverse action. Regulation B defines the term "adverse action," and generally requires a creditor who takes adverse action to send a notice to the consumer providing, among other things, the reasons for the adverse action.¹⁸ Some actions taken by creditors under overdraft protection programs might constitute adverse action but would not require notice to the consumer if the credit is deemed to be "incidental credit" as defined in Regulation B. "Incidental credit" includes consumer credit that is not subject to a finance charge, is not payable by agreement in more than four installments, and is not made pursuant to the terms of a credit card account.¹⁹ Overdraft protection programs that are not covered by TILA would generally qualify as incidental credit under Regulation B.

Truth in Savings Act

Under the Truth in Savings Act (TISA), deposit account disclosures must include the amount of any fee that may be imposed in connection with the account and the conditions

¹⁵ For federal credit unions, this time period may not exceed 45 calendar days. 12 CFR § 701.21(c)(3).

¹⁶ See 12 CFR 226.4.

¹⁷ 15 U.S.C. §§ 1691 *et seq.* The ECOA is implemented by Regulation B, 12 CFR Part 202. The ECOA prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the fact that all or part of the applicant's income derives from a public assistance program, and the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

¹⁸ See 12 CFR §§ 202.2(c) and 9.

¹⁹ See 12 CFR § 202.3(c).

under which the fee may be imposed.²⁰ In addition, institutions must give advance notice to affected consumers of any change in a term that was required to be disclosed if the change may reduce the annual percentage yield or adversely affect the consumer.

When overdraft protection services are added to an existing deposit account, advance notice to the account holder may be required, for example, if the fee for the service exceeds the fee for accounts that do not have the service.²¹ In addition, TISA prohibits institutions from making any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents their deposit contracts.

Since these automated and marketed overdraft protection programs did not exist when most of the implementing regulations were issued, the regulations may be reevaluated.

Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) and Regulation E require an institution to provide consumers with account-opening disclosures and to send a periodic statement for each monthly cycle in which an electronic fund transfer (EFT) has occurred and at least quarterly if no transfer has occurred.²² If, under an overdraft protection program, a consumer could overdraw an account by means of an ATM withdrawal or POS debit card transaction, both are EFTs subject to EFTA and Regulation E. As such, periodic statements must be readily understandable and accurate regarding debits made, current balances, and fees charged. Terminal receipts also must be readily understandable and accurate regarding the amount of the transfer. Moreover, readily understandable and accurate statements and receipts will help reduce the number of alleged errors that the institution must investigate under Regulation E, which can be time-consuming and costly to institutions.

Best Practices

Clear disclosures and explanations to consumers of the operation, costs, and limitations of an overdraft protection program and appropriate management oversight of the program are fundamental to enabling responsible use of overdraft protection. Such disclosures and oversight can also minimize potential consumer confusion and complaints, foster good customer relations, and reduce credit, legal, and other potential risks to the institution. Institutions that establish overdraft protection programs should, as applicable, take into consideration the following best practices, many of which have been recommended or implemented by financial institutions and others, as well as practices that may otherwise be required by applicable law. While the Agencies are concerned about promoted overdraft protection programs, the best practices may also be useful for

²⁰ 12 U.S.C. §§ 4301 *et seq.* TISA is implemented by Regulation DD at 12 CFR Part 230 for banks and savings associations, and by NCUA's TISA regulation at 12 CFR Part 707 for federally insured credit unions.

²¹ An advance change in terms notice would not be required if the consumer's account disclosures stated that their overdraft check may or may not be paid and the same fee would apply.

²² 15 U.S.C. §§ 1693 *et seq.* The EFTA is implemented by Regulation E, 12 CFR Part 205.

other methods of covering overdrafts. These best practices currently observed in or recommended by the industry include:

Marketing and Communications with Consumers

- **Avoid promoting poor account management.** Institutions should not market the program in a manner that encourages routine or intentional overdrafts. Institutions should instead present the program as a customer service that may cover inadvertent consumer overdrafts.
- **Fairly represent overdraft protection programs and alternatives.** When informing consumers about an overdraft protection program, inform consumers generally of other overdraft services and credit products, if any, that are available at the institution and how the terms, including fees, for these services and products differ. Identify for consumers the consequences of extensively using the overdraft protection program.
- **Train staff to explain program features and other choices.** Train customer service or consumer complaint processing staff to explain their overdraft protection program's features, costs, and terms, including how to opt out of the service. Staff also should be able to explain other available overdraft products offered by the institution and how consumers may qualify for them.
- **Clearly explain discretionary nature of program.** If payment of an overdraft is discretionary, make this clear. Institutions should not represent that the payment of overdrafts is guaranteed or assured if the institution retains discretion not to pay an overdraft.
- **Distinguish overdraft protection services from "free" account features.** Institutions should not promote "free" accounts and overdraft protection programs in the same advertisement in a manner that suggests the overdraft protection program is free of charges.
- **Clearly disclose program fees.** In communications about overdraft protection programs, clearly disclose the dollar amount of the fee for each overdraft and any interest rate or other fees that may apply. For example, rather than merely stating that the institution's standard NSF fee will apply, institutions should restate the dollar amount of any applicable fee or interest charge.
- **Clarify that fees count against the disclosed overdraft protection dollar limit.** Consumers should be alerted that the fees charged for covering overdrafts, as well as the amount of the overdraft item, will be subtracted from any overdraft protection limit disclosed.
- **Demonstrate when multiple fees will be charged.** If promoting an overdraft protection program, clearly disclose, where applicable, that more than one overdraft

fee may be charged against the account per day, depending on the number of checks presented on, and other withdrawals made from, the consumer's account.

- **Explain impact of transaction clearing policies.** Clearly explain to consumers that transactions may not be processed in the order in which they occurred, and that the order in which transactions are received by the institution and processed can affect the total amount of overdraft fees incurred by the consumer.
- **Illustrate the type of transactions covered.** Clearly disclose that overdraft fees may be imposed on transactions such as ATM withdrawals, debit card transactions, preauthorized automatic debits, telephone-initiated transfers or other electronic transfers, if applicable, to avoid implying that check transactions are the only transactions covered.

Program Features and Operation

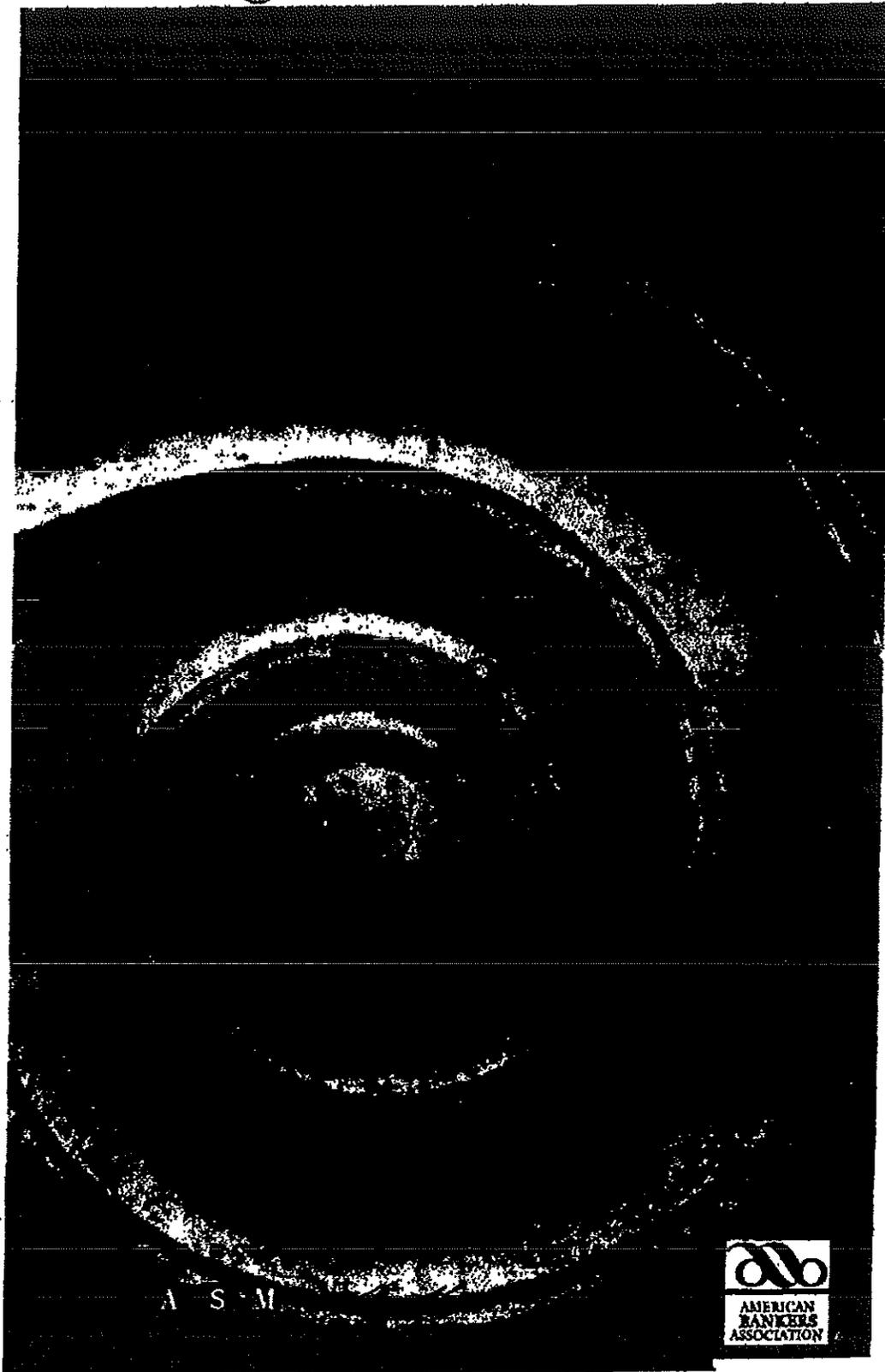
- **Provide election or opt-out of service.** Obtain affirmative consent of consumers to receive overdraft protection. Alternatively, where overdraft protection is automatically provided, permit consumers to "opt out" of the overdraft program and provide a clear consumer disclosure of this option.
- **Alert consumers before a transaction triggers any fees.** When consumers attempt to withdraw or transfer funds made available through an overdraft protection program, provide a specific consumer notice, where feasible, that completing the withdrawal may trigger the overdraft fees (for example, it presently may be feasible at a branch teller window). This notice should be presented in a manner that permits consumers to cancel the attempted withdrawal or transfer after receiving the notice. If this is not feasible, then post notices (e.g., on proprietary ATMs) explaining that transactions may be approved that overdraw the account and fees may be incurred. Institutions should consider making access to the overdraft protection program unavailable through means other than check transactions, if feasible.
- **Prominently distinguish balances from overdraft protection funds availability.** When disclosing a single balance for an account by any means, institutions should not include overdraft protection funds in that account balance. The disclosure should instead represent the consumer's own funds available without the overdraft protection funds included. If more than one balance is provided, separately (and prominently) identify the balance without the inclusion of overdraft protection.
- **Promptly notify consumers of overdraft protection program usage each time used.** Promptly notify consumers when overdraft protection has been accessed, for example, by sending a notice to consumers the day the overdraft protection program has been accessed. The notification should identify the date of the transaction, the type of transaction, the overdraft amount, the fee associated with the overdraft, the amount necessary to return the account to a positive balance, the amount of time consumers have to return their accounts to a positive balance, and the consequences

of not returning the account to a positive balance within the given timeframe. Notify consumers if the institution terminates or suspends the consumer's access to the service, for example, if the consumer is no longer in good standing.

- **Consider daily limits on the consumer's costs.** Consider imposing a cap on consumers' potential daily costs from the overdraft program. For example, consider limiting daily costs from the program by providing a numerical limit on the total overdraft transactions that will be subject to a fee per day or by providing a dollar limit on the total fees that will be imposed per day.
- **Monitor overdraft protection program usage.** Monitor excessive consumer usage, which may indicate a need for alternative credit arrangements or other services, and inform consumers of these available options.
- **Fairly report program usage.** Institutions should not report negative information to consumer reporting agencies when the overdrafts are paid under the terms of overdraft protection programs that have been promoted by the institutions.

This concludes the text of the final Joint Guidance on Overdraft Protection Programs.

Exhibit “D”



**Overdraft
Protection
A Guide for
Bankers**

Overdraft Protection A Guide for Bankers

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Overdraft Protection A Guide for Bankers

OVERDRAFT PROTECTION A GUIDE FOR BANKERS

Opinions abound about overdraft services - those formalized systems handling Non Sufficient Funds (NSFs) presented on a customer's account. Nessa Feddis, Senior Federal Counsel of the ABA, offers her insights in a recent article stating "the basics of bounce protection are sound."¹ At the same time, the Consumer Federation of America asserts that financial organizations are deliberately enticing consumers to write bad checks.² Vendors of overdraft programs extol their "customer-oriented" virtues, while the news media present overdraft users as pictures of despair. CEOs of some financial organizations tout the benefits to their customers, while others disparage the practice. Some banking organizations sign deals with vendors to endorse the programs, while a few publish negative opinions about them.

With this wide range of opinions, it is no wonder that many, inside the industry and out, question the practice and/or the methods of overdraft services. As a financial executive, how are you to approach overdraft services in order to best serve your customers, shareholders, and the public welfare?

Offering an overdraft protection program is a decision unique to each executive and organization. However, sometimes lost in the heat of the debate is the clarity created from a common set of facts. Concerns and fears grow in the absence of facts. Legitimate questions exist about overdraft services, and they deserve an analytical answer. Why has the overdraft issue arisen so fervently now and not 20 years ago? What are the benefits or reasons for a formalized overdraft program at your financial institution? What are the regulatory compliance components? What are recommended best practices, and what practices should be more cautiously considered or even avoided? Furthermore, concerns of the media and consumer groups alike have made it clear that there are definitely potential risks associated with overdraft programs, in the event the bank makes a mistake or "over-reaches" in the implementation.

Before making a decision, each bank should review any program being considered with a critical eye towards what is "right" for the customer and the bank. We hope that this guide will equip you with the background and knowledge you need to make the right decision for your bank.

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¹ Nessa Eileen Feddis, "Will We Kill a Useful Service?" ABA Banking Journal, April 2003, 42.

² Consumer Federation of America and National Consumer Law Center, "Bounce Protection: How Banks Turn Rubber into Gold by Enticing Consumers to Write Bad Checks," 27 Jan. 2003, <http://www.consumerfed.org/bounceappendix012603.pdf> (17 September 2003), Section 6.

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The Origins of the "Late Payment" Choice

Overall, consumer perceptions about debt and late payments are changing. A few years ago, some consumers counted on "float" to carry them through times when they might have been low on funds between paychecks. Over the past few years, float has been considerably decreased due to improved automation of processing systems, the increased usage of Internet banking, and the requirements of the Expedited Funds Availability Act. The increased time to clear a check that so many counted on before is no longer there.

Currently, on most of the bills that consumers pay on a monthly basis, the recipient is given the opportunity to pay the bill on time for one amount and late for a different (higher) amount. Consumers who choose to utilize the late payment option are aware of the late fee they will pay for this service. While one could certainly argue that this is financially imprudent, it is a choice that many make on a monthly basis.

Utility companies such as phone, gas, water, cable, and electric providers made this adjustment towards late payments in their policies in the 1990s. Prior to their change in approach, these industries often faced customer and public policy embarrassments when they discontinued service due to lack of payment. In order to meet customers' payment needs, they changed their approach, finding ways to serve customers who happened to be strapped for cash between paychecks. Below is a sample disclosure statement from a utility company that allows customers to pay their bills at a later date for an additional charge.

Sample Water Utility Policy Statement

Payments:
 Utility payments are due by the 15th of the month.
 Utility payments can be deposited in the drop slot located in the door of the City Office.

Late Payments:
 Payments received after the 15th of the month are considered late.
 A late charge of \$25.00 will be added to any bill not paid by the 15th.

Disconnect:
 Utilities will be disconnected if payment is not received by the last day of the month.
 Reconnect fee is \$25.00.

Overdraft Protection A Guide for Bankers

To address customer needs, vendors today supply what is now well recognized by consumers: an invoice, similar to the one above, which offers one payment if paid by a certain date, and a higher amount if paid by a later date. In defining why customers paid late fees, one utility study found that a significant segment did so even though they have sufficient financial resources.²

Bankers may want to consider the way they communicate with their customers regarding overdrawn accounts. Compare the sample utility bill referenced above with the method financial institutions commonly use to communicate with their customers. Non-bank companies typically inform the consumer of their methods of handling their account in the event the consumer does not meet their obligations on time, and they communicate the fee associated with this. They do not actively entice customers to pay their bills late, but they communicate how the account will be handled should the consumer pay late. Contrast this with the communication sent out by the bank. When an item is presented to an account with insufficient funds to pay the check, the bank generally sends out a terse notice indicating that the customer did not have the funds in their account to cover the check. The communication usually indicates that, although the bank may have paid the check, the practice of falling below the minimum balance in the account is not something the bank encourages.

The New Dynamics of Checking Accounts and Customer Communication

As new payment options have flourished over the past several years, the methods and means in which consumers use checking accounts have also changed. Rather than having only checks flow through their checking account, consumers now have many ways to access their funds, such as Internet access, ATM access, etc.

A by-product of having multiple delivery channels is that consumers now need better, more specific communication from financial institutions regarding use of these accounts. Financial institutions should be aware that in regard to consumers' attitudes toward late payments, the environment is changing. Banks need to be able to clearly articulate policies so that consumers can make

² Roger D. Colton, "Determining the Cost Effectiveness of Utility Late Payment Charges," July 1994, <http://www.fconline.com/downloads/LATE-FEE.pdf> (17 September 2003).

Informed decisions as well as understand the bank's policy regarding NSF fees when a customer mistakenly overdraws.

The Dilemma

Many bankers believe that a response that discourages overdrafts is the accepted course of action: They believe that overdrafting a checking account is simply "wrong." They believe that banks should actively discourage overdrafts and they view NSF fees as "punitive" fees that are designed to discourage the activity.

Other bankers believe that most of their customers are good customers that will ultimately clear up their accounts, and that paying an insufficient item is better for the customer than returning it. While not encouraging overdrafts, these bankers believe that they are actually helping their customers avoid other fees and providing them a valuable service when they pay overdrawn items.

Which view is appropriate? Or more precisely, which view is appropriate for your bank?

In many cases, these two views are not mutually exclusive. Bankers do not want to actively encourage overdrafts, but they do want to provide good customer service whenever and wherever prudent.

HOW FORMALIZED OVERDRAFT PROTECTION PROGRAMS WORK

The first question you might ask is, "How do these programs work?" An example may help illustrate the programs' underlying concepts.

John Smith is a customer at ABC Bank. John sits down to pay his bills on the 9th of the month. He gets to his credit card bill and he notices that the payment is due on the 15th, or he can wait and pay it on the 1st of the following month, in which case he will be charged a \$36 late fee. He decides to wait and pay the credit card bill late because he has an unexpected emergency expense that he needs to pay immediately. John understands "the deal" with the credit card company - they have communicated this to him with every bill. John

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understands that he will incur the late fee, but in spite of this, he makes the decision to defer the payment.

John isn't sure how ABC Bank would generally handle it if he were to present an NSF check. In the past he has presented checks that were paid when funds were not available, but he has also presented some that were returned. The bank's communication in both cases was very short and did not inform John how they made their decision. As a result, John has no comfort at all as to how the bank might handle the next check he presents.

*ABC Bank decides to begin offering a formal overdraft program. Through a variety of techniques, the bank communicates clearly with John and generally makes him aware of their decision-making process. When John is next faced with making the decision of whether or not to pay the credit card bill, he now considers his options. He can continue to pay the bill late as he has on occasion in the past, or he can go ahead and write the check to the credit card company today and have some comfort that the bank will probably pay it. He would pay the bank \$20 (their NSF fee) *vs.* paying the credit card company \$36.*

The Informed Consumer Effect

By communicating with customers, banks that offer formalized overdraft protection programs achieve the "Informed Consumer Effect," helping participants to make an informed decision on how to utilize this service, should the need arise. Because John is given some comfort on how his check will be handled, he shifts a fee from the credit card company to the bank and pays less in fees.

Just how does a bank communicate with a customer? This is an area where bankers should proceed with caution. A non-recommended method of communicating with customers is to market the service aggressively. A few banks put up billboards, take out radio ads, and do regular monthly statement stuffers. But as the Office of the Comptroller of the Currency pointed out in Interpretive Letter 914 (IL914), this could have the appearance that the bank is attempting to entice customers to overdraw their accounts, an activity that at best is "frowned upon" by consumer groups, and at worst could be considered an unsafe practice. At a typical bank, 60% to 70% of the customer base never (or rarely) present an insufficient item, and marketing to them is wasteful.

However, an efficient, fair, and consistent process could also be considered an opportunity for clear communication to customers - a way to enhance a customer relationship. Customers are often confused by the NSF decision-making process in those banks that do not have a formalized program, since there is often inconsistency in payment of NSF items. Banks that offer a formalized overdraft program have the opportunity to establish consistent guidelines for paying NSF items and to inform and educate customers who use the service.

WHY ARE MORE BANKERS CONSIDERING FORMALIZED OVERDRAFT PROTECTION?

As of January 2003, the Consumer Federation of America estimated that more than 1,000 banks in the United States use formalized overdraft protection programs, and that number is steadily growing.⁴ Why are more bankers considering these programs?

1. A New Definition of Customer Service

One of the most common complaints by consumer groups about overdraft protection services is that banks with these programs are providing "bad" customer service. Some consumer groups equate the paying of overdrafts with "payday" lending. They believe that paying an overdraft item is equivalent to taking advantage of an uninformed customer.

However, this seems to be an oversimplification of a much broader issue. Think about it from the perspective of your customers - would they consider it better customer service if the bank paid their check or returned it?

Bank employees also benefit from a consistent overdraft program that offers them guidance on how and when to cover overdraft items. Since they can now define their overdraft policy and explain it to the customer, they can offer better customer service. Defined overdraft program guidelines eliminate banker and customer confusion and lead to improved customer service.

2. A Way to Avoid Discriminatory Practices

Organized overdraft protection programs formalize a process that has been han-

⁴ Consumer Federation of America, "Bounce Protection," Section 2.

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died informally and in a discretionary manner in the past, making it more equitable and consistent. In general, banks have historically paid items for some customers and not paid them for others, based mostly on a variety of factors, including account history and the relationships the customer has with the personal bankers or CSRs working in the branch. By using overdraft protection software and more efficient automation, the banks that implement these programs state that they are attempting to treat all customers more fairly.

3. Increased Opportunity

When banks formalize their programs and disclose them, they learn that some customers find this to be a valuable service. These customers choose to write a check a few days before a deposit and pay the NSF fee rather than pay a late fee to the check recipient. They choose the bank option because the costs are generally lower than those imposed by the merchant or other payee, and it presents less of a hassle. Financial institutions that formalize their process and disclose it to customers allow their customers to make informed decisions for themselves.

COMMON CONCERNS

Bankers need to address a number of concerns before they decide to implement such a formal overdraft program. Questions raised by the media and consumers groups alike have spawned a variety of concerns.

Perceptions of "Abusing" the Customer

Media and consumer groups have voiced concerns that some overdraft protection programs are by nature deceptive and designed to take advantage of consumers. Other media reports discuss cases in which banks have allowed customers to overdraw with their ATM or debit card, at either the ATM or the point of sale, without notification that they were overdrawing the account or that they would be charged a fee. (Reg DD requires fee disclosure at account opening and on periodic statements.)

It is interesting to note that in most overdraft discussions the media and consumer groups often gloss over individual consumer responsibility. Banks only charge these fees to consumers that present NSF items. Overdrawing is a dis-

cretionary activity and is completely avoidable, much like the decision to use a foreign ATM. In both cases, the service provided is merely responding to customer need and behavior.

Although the ultimate responsibility lies with the consumer, situations may arise in which a customer becomes overextended and is unable to pay back the overdrawn amount and subsequent fees. As customer service organizations, banks should be aware of these situations and work with the customer to resolve the issue. Any program allowing chronic overdrafts that put the customer in difficult financial circumstances may seem to take advantage of a customer and, of course, should be avoided. Banks should communicate clearly and frequently with their customers regarding the status of their account balance. The bank may then offer the overextended customer a repayment plan, perhaps at a low interest rate, or reduced NSF fees to help the customer recover from the situation. The checking account could be left open and available, as long as the customer meets their repayment obligations.

Appearance of Violating Credit Laws

One recent article charged that banks are "skirting" credit laws when they pay overdrafts. The reasoning applied was that an overdraft is a short-term loan and the NSF fee imposed is interest. Some consumer advocates have stated that overdrafts amount to loans with very high interest rates, sometimes exceeding 1,000%.

These allegations ignore the fact that many banks charge the same fee whether the item is paid or returned, and there is no differential for overdrawing the account. More specifically, at most banks customers do not pay any additional fee for overdrawing their accounts - they are only charged a fee for presenting an insufficient item and the bank subsequently handling the item.

Credit laws apply when a bank extends credit to a consumer. According to the Truth in Lending Act, 15 USC 1601 et seq. (TILA) and its implementing Federal Reserve Regulation Z, 12 CFR Part 226, "Credit means the right to defer payment of a debt or to incur debt and defer its payment." The bank does not grant a "right" to overdraw; it is a discretionary activity on the part of

Overdraft Protection A Guide for Bankers

the bank. Credit laws have not applied to bank overdraft fees in the past, and it is unlikely that they will in the future.

As stated in the American Bankers Association letter from ABA Chairman-Elect Ken Fergeson, dated March 21, 2003, "Overdraft protection has been around for a long time, but has evolved over the years. Under automated bounce protection systems that are now gaining in popularity, banks disclose that they may pay overdrafts up to a limit—usually between \$100 and \$500, depending on the customer. The feature is typically available to all those eligible to open an account. There is no creditworthiness test as there is for an overdraft line of credit. A flat fee is charged for the overdraft, regardless of the amount."

Several bankers have shown hesitancy toward overdraft protection programs because of potential changes to Regulation Z (Truth in Lending), which would cause an overdraft to be considered a loan and related charges to be interest for APR purposes. For decades, under the terms of Regulation Z, regulators have not generally considered overdraft fees to be a loan when the item is paid. Prior history with other regulations has shown that the Federal Reserve changes them only after careful consideration.

Moreover, any change in regulation would likely impact the payment of all NSF items, not just those items at banks with formal overdraft programs. It would be a very detrimental change to consumers for the regulators to alter regulations in such a manner that banks could effectively no longer pay any overdrafts.

Incurring Too Much Risk

It may appear upon initial review that paying overdrafts would increase the overall risk levels of a bank. After all, the customer is typically not required to complete any type of application for the service. Most banks do not subject customers to a formal underwriting process prior to allowing the customer to overdraw their account. The bank typically does not obtain credit scores.

Prudent bankers must approach an overdraft program as they would any other new product or service offering. Analysis of the particular program must be performed with the bank's overall risk tolerance in mind. Acceptable levels of risk must be determined prior to entering any program and monitored after implementation.

Most bankers who have implemented a formal overdraft program indicate that charge-offs do, in fact, increase. However, they also indicate that the overall level of charge-offs is within acceptable levels of risk and the benefits of the overdraft program outweigh the increase in charge-offs.

ADDRESSING THE REGULATORY CONCERNS

Regulators have expressed concerns when reviewing overdraft protection programs, and all bankers considering this service should take care to address them. Some of the main issues are delineated in OCC Interpretive Letter 914 and further defined in the ABA letter dated March 21, 2003, from Ken Ferguson, ABA Chairman-Elect. IL914 outlines three types of regulatory concerns with respect to one particular overdraft protection program. They include: 1) Compliance Issues, 2) Supervisory Concerns, and 3) Policy Issues. We recommend studying IL914 in depth and reviewing the concerns of the OCC with legal counsel. However, there are basic steps bankers can take to be proactive in addressing these regulatory concerns.

Define the Process Specifically.

For many years banks have paid checks on an inconsistent basis, often times lacking universal guidelines that employees could follow. Often, banks did not have a formal policy in place to guide bankers on how and when to cover an overdraft. Defining the process specifically will help to alleviate compliance concerns. Due to simple human nature, when paying or returning an overdraft using only personal discretion as a guide, inconsistencies will result. By applying consistent criteria across the board, the entire process should become consistently implemented with all customers.

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Use Detailed Reporting and Tracking.

As part of the bank's formal process, the bank should use detailed reporting and tracking of accounts in the overdraft protection program. This will ensure that all levels of management remain apprised of the program, and that potential abusers of the service can be spotted and addressed appropriately, including being removed from the program.

Avoid Statements that Seem Like Commitments.

In all written communication to customers, be certain to stay away from statements that sound like absolute commitments to pay overdrafts (e.g., "never incur a merchant charge again"). The Office of the Comptroller of the Currency in its Interpretive Letter 914 (IL914) points out that the Federal Trade Commission Act prohibits deceptive acts or practices, including representations or omissions that are likely to mislead reasonable consumers. Carefully word all the bank's customer communications to explain the overdraft process clearly and directly. Be sure to acknowledge that the process to pay NSF's is completely discretionary and that all overdrafts will not be paid automatically.

Avoid "Enticing" Customers to Begin Presenting NSF's.

Studies have shown that most customers do not overdraw their accounts, nor do they want to. In 2002, Raddon Financial Group estimated that nearly 80% of customers have little or no interest in NSF services. Heavy marketing of an overdraft protection program could give the appearance that the bank is attempting to entice customers who currently do not overdraw accounts to begin overdrawing them. Aggressive marketing can potentially backfire, even though the intent may simply be to inform the customer of a helpful, new service that is now available. Instead, establish sound, customer-service response-oriented policies for customers who overdraw their accounts. Above all, do not state that overdrawing is an acceptable practice; offer alternatives. The bank should also provide appropriate disclosures at the ATM and teller window if customers are allowed to overdraw their accounts at those channels.

Use the Same Fee for Both Paying and Returning.

One of the "tests" offered in IL914 for determining if an overdraft fee is a finance charge or not, as stated under Regulation Z, is whether an NSF fee is the same regardless of whether a check is paid or returned. By charging the same fee in both instances, the fee is unlikely to be considered a "finance charge."

Utilize Effective Risk Management Techniques.

Banks that monitor customer behavior can contact those customers who exhibit excessive or abusive usage and inform them of bank programs that can help them manage their account balances. This practice should identify customers who show a serious lack of account management so that bank management can make decisions on the customer's continued involvement in the bank's overdraft program.

**RECOMMENDED BEST PRACTICE
"DO'S AND DON'TS"**

In addition to taking proactive steps to address regulatory concerns, adhering to certain "best practices" will help ensure that an overdraft protection program takes the right approach. The main best practices that all bankers should know include:

Best Practice "Do's"

- 1. Do inform customers that the bank has other ways to handle overdrafts, such as lines of credit and automatic transfers.** Clear communication will give customers all the information they need to make an informed decision. Let your customers know that the bank has other, potentially less expensive ways to handle overdrafts.
- 2. Do proactively offer an "opt-out" giving the customers a choice.** Some customers may not want to have their items paid, and they should be given this choice. By sending each qualified customer a letter with an opt-out clause before the program is implemented, bankers are ensuring that all customers are duly informed and are aware of their alternatives.
- 3. Do monitor customer activity, and don't let customers abuse the service.** Utilize software tools to generate detailed reports that will allow the bank to track customers who may be abusing the privilege. Consider contacting and notifying frequent overdrafters of the cost of these services, and suggest a meeting with bank officers to consider other alternatives to overdrafting.

Overdraft Protection: A Guide for Bankers

4. Do apply good risk management techniques, using software to monitor usage. IL914 notes that overdraft protection programs could increase a bank's credit risk profile (e.g., higher delinquency and loss rates) by extending credit to borrowers who may not have normally qualified for payment of overdrafts or overdraft protection. By utilizing software tools with robust reporting capabilities, you should be able to minimize this risk and manage it accordingly.

5. Do communicate with customers often, using multiple channels (i.e., letters, phone calls, email). It is imperative that bankers notify customers as overdrafts are presented and then continue to communicate with the customer while they are overdrawn. As ABA Senior Federal Counsel Nessa Feddis states in an April 2003 *ABA Banking Journal* article, "A consumer understanding of bank practices in this matter is *absolutely critical* to avoid charges of unfair play." Communication and education of customers will help to dispel the mystery of the process and enhance the overall customer relationship as well.

Best Practice "Don'ts"

1. Don't use aggressive marketing. One of the biggest red flags for regulators and consumer groups alike is a program that tries to achieve increased revenue through aggressive marketing techniques. This kind of customer communication also makes it seem as if the bank is attempting to encourage customers who have not presented NSF's to begin presenting them.

2. Don't step over the line from a compliance perspective. Regulators may question programs that give the wrong impression about the scope of protection offered by the program and in turn oversell its benefits. When communicating with customers, it is important to use clear, precise, and accurate language that does not attempt to oversell the customer. Keep in mind that this service is discretionary, and therefore avoid promises or words that sound like commitments to customers. Claims of "no more charges from retailers for insufficient checks," "make a mistake - you're covered," and "write a check or use an ATM for more than you have in the bank - you're covered" are overly broad statements, given the limitations of these programs.

¹ Feddis, 40.

3. Don't allow customers the opportunity to access funds that will put their account into a negative balance at the ATM, through POS, or teller window without customer knowledge. Banks should communicate clearly with their customers and disclose all fees and charges associated with transactions that will result in an overdraft status on the account.

If bankers make the decision to allow customers to overdraw their account balance at the ATM, through POS, or teller window, if technically feasible the bank should inform the customer at the time of the transaction that they will incur an additional fee for overdrawing under the circumstances. If this is not technically feasible, the bank should place notices at the ATM or have a policy in place that does not allow the customer to overdraw the account at the ATM.

Banks should not mislead their customers as to the actual balance in their account and they should clearly present balances to their customers in a format that is easy to understand. For example, if the overdraft limit is included in an "available balance," the text on the ATM screen and receipt should specifically state that the balance includes the overdraft limit. Mistakes are easily made if this information is not communicated to the customer clearly at the time of the transaction. Additionally, banks should consider waiving any initial NSF fees for customers who inadvertently overdraw their checking account due to any type of confusion at electronic channels.

4. Don't leave out effective risk management. Given the loss history of bank overdraft programs, bank management should develop reasonable loss recognition guidelines and establish loan loss reserve methodologies to ensure timely loss recognition and estimated loss coverage. This is imperative. Strict loss-recognition programs and tracking are recommended.

Overdraft Protection A Guide for Bankers

CONCLUDING REMARKS

With the wide range of opinions and heartfelt emotions concerning overdraft programs, it is no wonder that many inside and outside the industry question either the practice or the methods of overdraft services. In sorting through the facts and opinions, history can be an excellent guide. In the May 20, 1981, issue of *Business Week*, the headline read, "With the Fed showing no signs of easing its regulations, banks are doubting the wisdom of offering certificates of deposit."⁸ Believe it or not, this statement was made concerning negotiable CDs!

Even the most pedestrian of bank products today, certificates of deposit, were once the subject of much debate and concern. Consumer needs often are ahead of regulatory management and public policy. Such may be the case with formalized overdraft programs. Bankers, however, must carefully consider all sides of the formalized overdraft option to make the best decision for their banks.

⁸ "Some Second Thoughts to CDs," *Business Week*, 20 May 1981, 134.

Overdraft Protection A Guide for Bankers

APPENDIX

Letter to Bank CEOs from the ABA Chairman-Elect.

Date: March 21, 2003

To: Bank CEOs

From: Ken Ferguson, ABA Chairman-Elect

Hundreds of banks are offering automated bounce protection on checking accounts, a new version of bankers' traditional practice of paying overdrafts. Many other banks are considering it. That's why I'm writing. As ABA's Chairman-Elect and a community banker, I'm hearing a lot of concern about this product and the consequences of offering and promoting it.

All bankers want a fair return. But bankers also have a responsibility to treat customers fairly and provide them with clear, conspicuous disclosures. One misleading phrase or questionable ad can destroy your customers' trust in a heartbeat, an awfully high price to pay. As one compliance officer wrote about paying interest on investable balances, "It's cute. It's legal. Don't do it!" When put under a spotlight, that practice led Congress to enact the Truth-in-Savings Act and the Fed to issue Reg DD. That example could be a preview of coming attractions if bankers don't look carefully before they leap into this.

Consumers like overdraft protection. It can save them returned-check fees from creditors or merchants and avoid tarnishing their credit rating in credit bureaus and databases. But some of these products have drawn fire from the regulators and in the media—and litigation won't be far behind, as customers start complaining about unfair treatment.

Overdraft protection has been around for a long time, but has evolved over the years. Under automated bounce protection systems that are now gaining in popularity, banks disclose that they may pay overdrafts up to a limit—usually between \$100 and \$500, depending on the customer. The feature is typically available to all those eligible to open an account. There is no creditworthiness test as there is for an overdraft line of credit. A flat fee is charged for the overdraft, regardless of the amount.

Before you offer a bounce protection product, decide if you'd want to defend the one you're considering in your local newspaper or to your regulator. To protect yourself and your institution's reputation, you should, at a minimum:

- **Disclose, disclose, disclose.** Disclose costs and terms in the agreement fully and conspicuously, including treatment of debit card overdrafts. And disclose charges prominently in statements.
- **Make clear that the bank is not promising to pay checks, even if the consumer meets the criteria for paying an overdraft.**
- **Do not encourage overdrafts in your marketing materials, advertising or communications.** Some customers have bounced checks because, on balance inquiries, their bank adds the amount of their overdraft protection to their true balance, leading them to believe they have more than they do. Some bank messages encourage them to use the product anytime.
- **Monitor the account for frequent use of the service.** Customers may not understand how to use it appropriately.

All of these efforts may still not be enough. Done carefully, automated bounce protection programs can be good for your customers and for the banks. But without understanding how your program will be seen and judged in your community, in the agencies and in court, it could become your worst nightmare. If you offer one, proceed with caution and make sure you do it right.

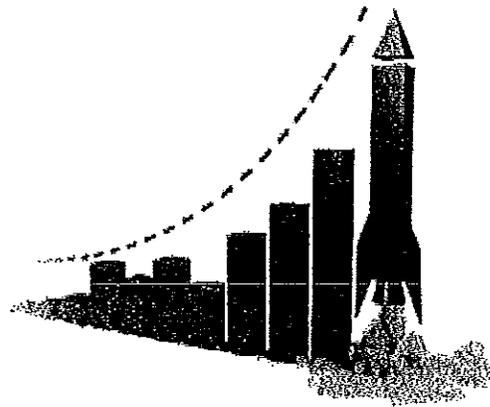
If you have any questions or concerns, please contact ABA Regulatory Director Jim McLaughlin, at 1-800-BANKERS.

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Exhibit “E”



Overdraft Explosion:

Bank fees for overdrafts increase 35% in two years

Leslie Parrish
Center for Responsible Lending

October 6, 2009



www.responsiblelending.org

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Summary Findings:

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- Finding 2: Banks and credit unions collected nearly \$24 billion in overdraft fees in 2008.
- Finding 3: Overdraft fee income for banks and credit unions rose 35 percent from 2006 to 2008.

OVERVIEW

It is now standard practice for most banks and credit unions to automatically enroll checking account customers in their most expensive overdraft loan program—one in which the financial institution generally approves transactions when the accountholder does not have enough funds to cover them, in return for a fee of around \$34 per overdraft.

Banks contend that this type of overdraft protection is a service to their customers, helping them to avoid bouncing checks. They further claim that the alternative would be to return the check unpaid, with the customer incurring an NSF fee from the bank and, potentially, a bad check fee from a merchant or a late fee from a landlord or utility company.

However, the reality is far different than the scenario painted by banks. Overdraft fees are most typically triggered not by checks, but by debit card transactions and ATM withdrawals that could easily be denied for no fee.¹ In addition, common banking practices—such as re-ordering transactions from largest to smallest—increase the number of overdraft fees paid by customers rather than helping them avoid charges.² Institutions also generally place no meaningful limits on how many fees a customer can incur within a given period.³ Finally, because banks generally charge a fixed overdraft fee regardless of the size of the transaction covered, the fee bears no relationship to the actual cost to the institution of covering the overdraft. In fact, previous CRL research found that consumers paid about \$2 in fees for every \$1 in credit extended if they overdrew their account using a debit card at a checkout counter.⁴

These practices are especially alarming given that institutions automatically enroll consumers into this type of program, even when lower-cost forms of overdraft protection—such as a formal overdraft line of credit or a link to a savings account—are usually available. Several CRL surveys have found that an overwhelming majority of respondents, including those who have recently overdrawn their account, want a choice about what—if any—form of overdraft program to enroll in and prefer that debit card overdrafts not be covered.⁵

Overdraft fees are most typically triggered not by checks, but by debit card transactions and ATM withdrawals that could easily be denied for no fee.

This report quantifies the number of Americans that have overdrawn their account and are potentially affected by the abusive practices typical of today's overdraft loan programs. It also updates previous CRL estimates of the resulting costs incurred by consumers. To this end, we utilize results from a recent FDIC study to estimate the number of Americans whose accounts become overdrawn in a given year, with a focus on those accountholders with five or more incidents per year. In addition, we also update our 2006 estimate of the total cost consumers pay annually in overdraft fees and evaluate the dramatic increase in fees over a two-year period.

FINDINGS

Finding 1: Over 50 million Americans overdraw their checking account at least once over a 12-month period, with 27 million accountholders incurring five or more overdraft or non-sufficient funds (NSF) fees.

A recent survey of 39 FDIC-regulated banks holding 6.5 million accounts found that about one of every four checking accounts became overdrawn at some point over a twelve-month period, and about one out of seven checking accounts was overdrawn five or more times.⁶

If we assume one checking account per adult (excluding those who lack a bank account entirely), an estimated 51 million Americans overdraw their account—and were therefore assessed either an overdraft or NSF fee—over the past 12 months. Perhaps more troubling, over half of those—27 million Americans in all—incur five or more overdraft incidents during the same time period. To put this number into perspective, more Americans overdraw their account at least five times than live in the state of Texas. A majority of accountholders in this category significantly exceeded five overdrafts; nearly two-thirds of these 27 million had ten or more incidents within a one-year period. Table 1 and Figure 1 below detail our calculations.

Figure 1: Share of total checking accounts that become overdrawn during a year and total accountholders affected

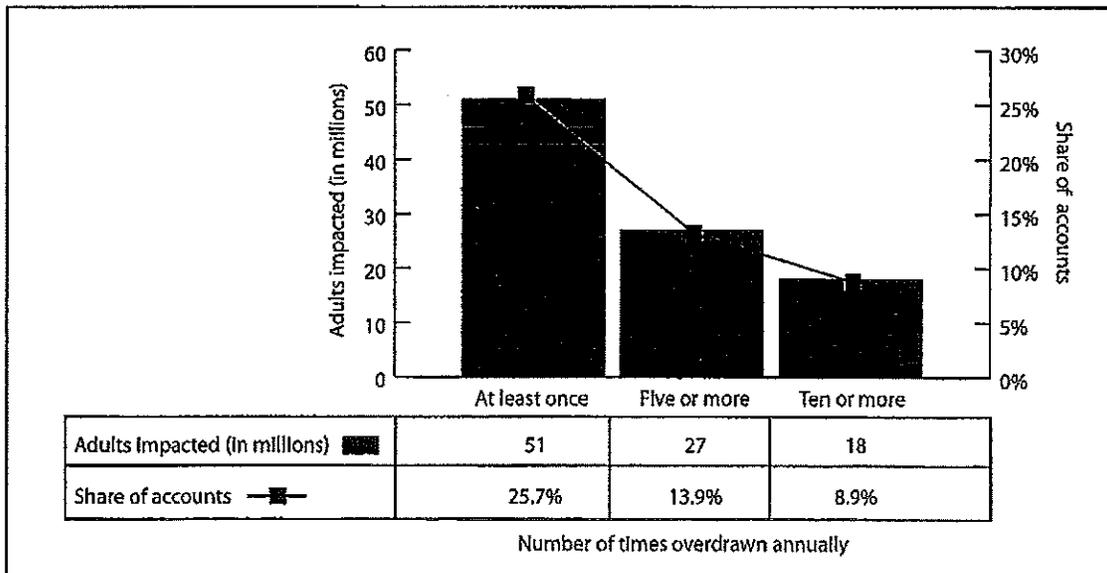


Table 1: Number of adults affected by overdrawn accounts annually

(A) Total population age 18 and over*	225 million
(B) Population without a bank account**	28 million
(C) Total adults with a bank account (C=A-B)	197 million
(D) Adults impacted by at least one overdraft incident (C*25.7%)	51 million
(E) Adults impacted by at least five overdraft incidents (C*13.9%)	27 million
(F) Adults impacted by ten or more overdraft incidents (C*8.9%)	18 million

*2008 Current Population Survey, U.S. Census Bureau

**The FDIC's Alliance for Economic Inclusion estimates that as many as 28 million people in the United States are unbanked.

In previous research, CRL found that consumers who repeatedly overdraw their account are more likely to be low-income, single, non-white, and renters.⁷ In its analysis of the income and age of accountholders with overdrawn accounts, the FDIC found that lower-income groups and young adults age 18-25 were the most likely to incur an overdraft or NSF fee.⁸

Finding 2: Banks and credit unions collected nearly \$24 billion in overdraft fees in 2008.

These millions of Americans who overdraw their accounts represent an increasingly significant source of fee income for financial institutions. Banks and credit unions are not required to directly report their total income related to overdraft and NSF fees; however, the FDIC found that nearly three-quarters of its banks' service charge income was the result of overdraft and NSF fees.⁹ Using this breakdown, we estimate that banks and credit unions assessed their customers \$34.3 billion in fees when their accounts became overdrawn in 2008. We estimate that 69 percent of this \$34.3 billion, or \$23.7 billion, is comprised of overdraft fees alone.¹⁰

Table 2: Total overdraft fees collected by banks and credit unions

(A) Service charge income (Banks)*	\$39.5 billion
(B) Fee income (Credit Unions)**	\$6.8 billion
(C) Total service charge/fee income, all banks and credit unions (A+B)	\$46.3 billion
(D) Estimated share of (B) and (C) generated by overdraft and NSF fees***	74%
(E) Estimated total overdraft and NSF fees collected (C*D)	\$34.3 billion
(F) Estimated share of (E) attributable to overdraft fees alone	69%
(G) Estimated total overdraft fees alone (E*F)	\$23.7 billion

*Service charge income as reported in FDIC call report data for 2008.

**Fee income (the equivalent of service charge income for credit unions) as reported by the National Credit Union Administration for 2008.

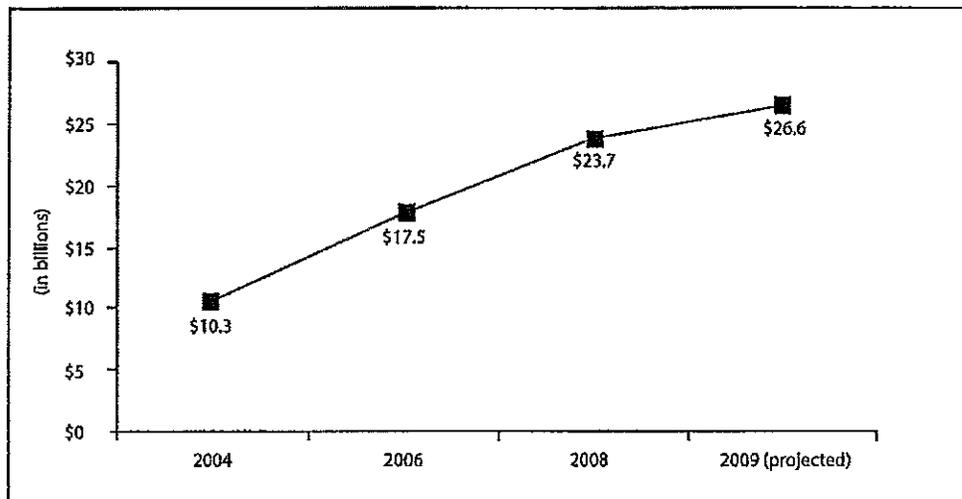
***Based on findings from the 2008 FDIC Study of Bank Overdraft Programs.

These fees are likely to be even higher in 2009. One leading analyst of bank and credit union fees projects that \$38.5 billion in overdraft and NSF fees will be collected this year.¹¹ If our current assumptions hold, overdraft loan fees will comprise nearly \$27 billion of this total amount.¹²

Finding 3: Overdraft fee income for banks and credit unions rose 35 percent from 2006 to 2008.

Our new estimate that consumers paid \$23.7 billion in overdraft fees in 2008 represents a 35 percent increase since our last estimate in 2006. In absolute terms, overdraft fees increased \$6.2 billion in two years—part of a continuing trend that we have observed since our first estimate in 2004, and which we expect to continue through 2009.

Figure 2: Increase in overdraft fees over time



Rising overdraft fees have several underlying sources. First, many financial institutions have increased the fee per overdraft incident and are more frequently charging additional fees if a customer's account remains overdrawn for several days.¹³ In addition, some banks no longer employ caps on the total fees incurred per day, heightening the chances that someone with multiple transactions will pay hundreds of dollars in fees before even knowing their account is overdrawn.¹⁴

Second, consumers are using debit cards—the most common trigger of overdrafts—both more frequently than in the past and for increasingly small transaction amounts. Today, nearly three-quarters of checking account customers have a debit card, with active card users averaging 17 debit card transactions per month.¹⁵ As a result, debit card usage has exceeded credit card usage since 2005.¹⁶ At the same time, the average debit card transaction size has decreased by about four percent per year, with more than a quarter of all debit card transactions now conducted for purchases of less than \$10.¹⁷ As an analyst from the First Manhattan Consulting Group has noted, “the wide adoption of debit cards had

“[T]he wide adoption of debit cards had two multiplicative effects: it increased the possibility of a mistake that would take an account negative, and it also increased the number of overdraft events while the customer was unaware he had crossed the line.”

—analyst, First Manhattan Consulting Group

two multiplicative effects: it increased the possibility of a mistake that would take an account negative, and it also increased the number of overdraft events while the customer was unaware he had crossed the line.”¹⁸

As a result of these trends, service charge income, of which overdraft and NSF fees play an increasingly large part, has steadily increased.

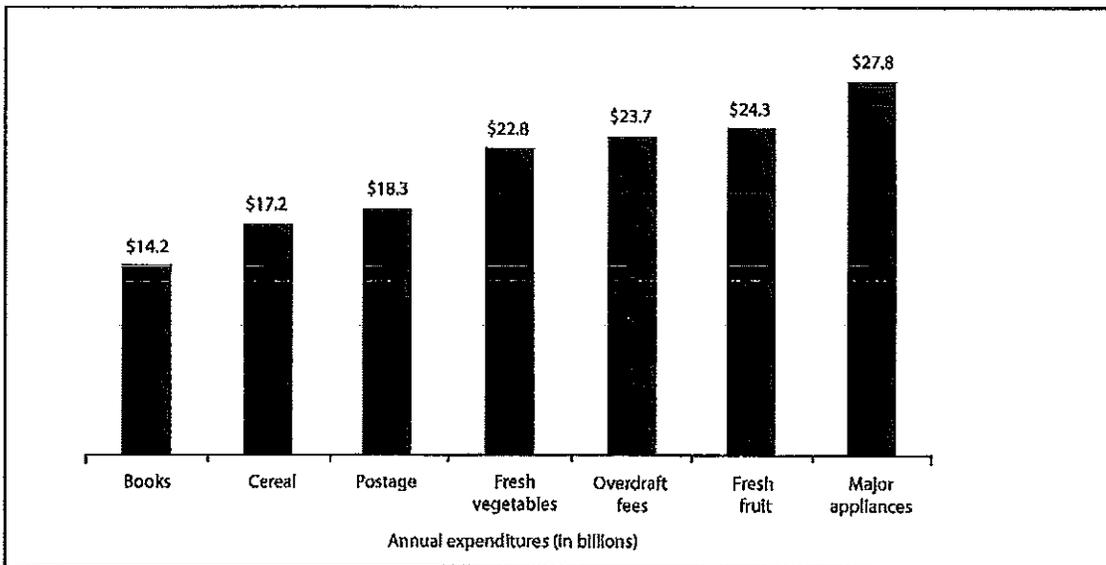
Table 3: Change in overdraft fees collected, 2006–2008

	2006	2008
(A) Service charge/fee income	\$42.2 billion	\$46.3 billion
(B) Share of (A) generated by overdraft and NSF fees	60%	74%
(C) Total overdraft and NSF fees collected	\$25.3 billion	\$34.3 billion
(D) Share of (C) attributable to overdraft fees alone	69%	69%
Total attributable to overdraft fees alone	\$17.5 billion	\$23.7 billion

DISCUSSION

Overdraft fees eat into the already-strained budgets of working families, with Americans now spending far more on overdraft fees annually than they do on common household items such as books, cereal or postage stamps. Americans spend about the same amount on overdraft fees as they do on fresh vegetables every year, and only a little less than they do on fresh fruit.¹⁹

Figure 3: Annual fees resulting from overdrafts, as compared to common household expenditures



Overdraft fees are charged to people who typically are enrolled in an overdraft program without their consent. In most cases—particularly if they are using debit card—survey results show that consumers would rather have their transaction denied than be approved in exchange for a \$34 fee.²⁰

Table 4: Share of respondents who would prefer their transaction be denied at the checkout counter, if account overdrawn, among those with a preference²¹

	Would prefer to be declined
\$5 transaction	80%
\$20 transaction*	79%
\$40 transaction	77%

*The average debit card transaction triggering an overdraft fee is \$20.

Overdraft fees triggered by small dollar transactions, most typically occurring when a debit card is used, are especially pernicious because the credit extended to cover the shortfall is often far smaller than the overdraft fee charged. In previous research we found that, even when accounting for overdrafts caused by checks and other triggers, the overall overdraft fees charged exceed the credit extended.²² For 2008, we estimate that checking account holders receive only \$21.3 billion in credit for the \$23.7 they pay in overdraft loan fees.²³ Put another way, consumers were obligated to repay \$45 billion for \$21.3 billion in extremely short-term credit.²⁴

For 2008, consumers were obligated to repay \$45 billion for \$21.3 billion in extremely short-term credit.

The Federal Reserve is currently considering whether—and how—to provide better consumer choice about enrollment in bank overdraft programs.²⁵ As described in our policy recommendations below, however, regulators must go further to curb existing abuses. In addition, Congress is considering larger-scale reforms to overdraft loan programs.²⁶

CONCLUSION & POLICY RECOMMENDATIONS

Each year, over 50 million Americans overdraw their checking account, paying nearly \$24 billion in overdraft fees. Twenty-seven million Americans pay five or more overdraft or NSF fees each year. The most common triggers of these fees are small debit card transactions that could easily be denied for no fee.

Financial institutions engage in abusive practices that maximize overdraft fee revenue. They approve debit card transactions that they could deny for no fee; they charge exorbitant fees that bear no relationship to the cost of covering an overdraft; they charge excessive numbers of overdraft fees over the course of a day, month, or year; and they automatically enroll customers in the most expensive overdraft option available.

Financial institutions approve debit card transactions that they could deny for no fee; they charge exorbitant fees that bear no relationship to the cost of covering an overdraft; they charge excessive numbers of overdraft fees over the course of a day, month, or year; and they automatically enroll customers in the most expensive overdraft option available.

As more transactions are conducted through debit cards and banks find new ways to increase their overdraft charges, the cost to accountholders will climb further. Policymakers and regulators can help protect consumers from abusive features of overdraft loan programs by adopting the following recommendations:

Prohibit overdraft fees on debit card purchases and ATM withdrawals. As a limited exception, a fee could be allowed only if the customer were provided a real-time warning and an opportunity to cancel the transaction. Overdraft fees triggered by debit cards could be denied for no fee—the outcome consumers overwhelmingly prefer. As recently as 2004, 80 percent of all institutions denied debit card overdrafts, and at least one large bank and a number of smaller institutions continue to decline debit card transactions that would otherwise result in an overdraft.²⁷ Moreover, the typically small transaction size of debit card transactions means that accountholders often pay more in fees than they receive in credit. Overdraft fees on debit card purchases and ATM withdrawals should either be prohibited altogether, or they should only be allowed if consumers are provided a real-time warning notifying them that the transaction will result in an overdraft and telling them the amount of the overdraft fee. Once this warning is given, the consumer should be given an opportunity to cancel the transaction or use another method of payment.

Overdraft fees triggered by debit cards could be denied for no fee—the outcome consumers overwhelmingly prefer.

Require that overdraft fees be reasonable and proportional to the actual cost to the financial institution of covering the overdraft. On average, overdraft fees exceed the amount of credit extended, which is particularly troubling given the short time period until repayment—usually only a few days.²⁸ Since banks are able to repay themselves out of the accountholder's next deposit, these loans carry a low default risk relative to their high cost. Overdraft fees should be proportional to the actual cost to the institution of covering the overdraft, taking into account the cost of funds, default risk, and a reasonable profit margin. Indeed, a product designed to be proportional to the cost to the institution of covering the overdraft already exists—an overdraft line of credit at a reasonable interest rate.

Limit excessive overdraft fees. Consumers who overdraw their accounts frequently may find that overdraft fees beget more overdraft fees, driving them further into debt and ultimately making them less able to meet essential expenses. Once a customer has paid an excessive number of overdraft fees within a 12-month period, the financial institution should be required to provide the customer a longer-term, lower-cost alternative, such as an overdraft line of credit, in order to continue charging the customer for overdrafts. Policymakers should determine what constitutes an excessive number of fees, but it should be no more than six fees per year.

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Prohibit overdraft fees unless the customer has affirmatively consented, or "opted in," to the institution's overdraft loan program. CRL surveys have found that nearly 90 percent of accountholders want to choose whether or not to be enrolled in an overdraft loan program.²⁹ Financial institutions should be prohibited from charging an overdraft fee unless the customer has affirmatively agreed to be enrolled.

Require banks and credit unions to comply with the Truth in Lending Act for overdraft loans by disclosing their cost in terms of an annual percentage rate. When a financial institution covers a transaction when there are insufficient funds in an account, they are extending credit to that customer. Regulators should clarify that overdraft fees are finance charges under the Truth in Lending Act and require appropriate disclosures to help consumers compare the cost of borrowing through fee-based overdraft with other alternatives, such as an overdraft line of credit.

Create a Consumer Financial Protection Agency (CFPA) to protect consumers against unfair practices in the financial services industry. While federal regulators have recognized problems with overdraft loan practices since the early 2000s, meaningful reforms have yet to be required. The creation of a new agency focused on consumer protection would provide much needed oversight of products offered throughout the financial services industry, and the CFPA could prohibit abusive banking practices such as those related to overdraft loans.

NOTES

1 Debit card transactions (either at the point of sale or ATM) cause 44 percent of total overdrafts, while checks trigger just 27 percent. See Eric Halperin, Lisa James, & Peter Smith, *Debit Card Danger: Banks offer little warning and few choices as customers pay a high price for debit card overdrafts*, Center for Responsible Lending (January 25, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-Danger-report.pdf>.

2 For an example of how transaction re-ordering can generate more overdraft fees, see Eric Halperin & Peter Smith, *Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans*, Center for Responsible Lending (July 11, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/out-of-balance-report-7-10-final.pdf> at page 5.

3 While some financial institutions have recently lowered the number of overdraft fees per day a customer can be charged, these fees can be well in excess of \$100 daily.

4 In an analysis of a large database of checking account transactions, CRL found that the median overdraft resulting from a debit card transaction cost the consumer \$1.94 per \$1 borrowed. See Eric Halperin, Lisa James, & Peter Smith, *Debit Card Danger: Banks offer little warning and few choices as customers pay a high price for debit card overdrafts*, Center for Responsible Lending (January 25, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-Danger-report.pdf>.

5 See survey findings in Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending (April 16, 2008), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf> and *Overdraft Fees and Opting In: A survey of consumer preferences*, Center for Responsible Lending (March 2009) available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/consumer-preference-opt-in.pdf>. In the 2008 survey, 88 percent of respondents reported wanting a choice as to whether their debit card overdrafts would be covered, and more than three-quarters preferred debit card transactions resulting in an overdraft be declined.

6 *FDIC Study of Bank Overdraft Programs*, Federal Deposit Insurance Corporation (November 2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf. Calculations based on findings in Table IX-11 at page 76.

7 Lisa James & Peter Smith, *Overdraft Loans: Survey finds growing problem for consumers*, Center for Responsible Lending (April 24, 2006), available at http://www.responsiblelending.org/overdraft-loans/research-analysis/tp013-Overdraft_Survey-0406.pdf.

8 See pages 77-80 of *FDIC Study of Bank Overdraft Programs*, Federal Deposit Insurance Corporation, (November, 2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

9 The FDIC found that, among the financial institutions it regulates that participated in its survey, overdraft and NSF fees made up 74 percent of all service charge income. While the FDIC cautions that this breakdown may not be applicable to all banks and credit unions, several industry analysts, including Bretton Woods and Moebs Services, have found similar results across financial institutions. See *FDIC Study of Bank Overdraft Programs*, Federal Deposit Insurance Corporation (November 2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

10 In an analysis of a large database of checking account transactions, we found that overdraft fees were assessed 69 percent of the time when a consumer overdraw their account, while NSF fees were incurred only 31 percent of the time. See Eric Halperin & Peter Smith, *Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans*, Center for Responsible Lending (July 11, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/out-of-balance-report-7-10-final.pdf>.

11 Mike Moebs of Moebs Services, Inc. projects \$38.5 billion in overdraft and NSF fees will be collected in 2009, with roughly 70 percent, or \$27 billion attributable to overdraft fees alone. See Ron Lieber & Andrew Martin, *Overspending on Debit Cards is a Boon for Banks*, *The New York Times* (September 8, 2009).

12 Using our current assumption that overdraft fees alone comprise 69 percent of total overdraft and NSF fees, we project \$26.6 billion in overdraft fees for 2009 based on Mike Moebs' projection (\$35.8 billion * 69% = \$26.6 billion), which approximates Moebs' own projection of \$27 billion.

13 Jean Ann Fox, *Fees for Unauthorized Overdraft Loans Keep Going Up at Largest Banks: Consumers need better protections to safeguard bank accounts*, Consumer Federation of America (July 31, 2009), available at http://www.consumerfed.org/pdfs/OD_CFA_bank_fee_survey_release_2009_final.pdf.

14 Jean Ann Fox, *Fees for Unauthorized Overdraft Loans Keep Going Up at Largest Banks: Consumers need better protections to safeguard bank accounts*, Consumer Federation of America (July 31, 2009), available at http://www.consumerfed.org/pdfs/OD_CFA_bank_fee_survey_release_2009_final.pdf.

15 *Despite Recession, Card Issuers Expect Debit Growth in 2009: 2009 Debit Issuer Study*, commissioned by PULSE, reveals greater PIN debit use and lower fraud losses, Pulse Network (June 4, 2009), available at https://www.pulsenetwork.com/public/upload/storage/file250/file/2009-Debit_Issuer_Study_Release.pdf.

16 In 2005, there were 26 billion debit card transactions, compared to 22 billion credit cards transactions. Debit card usage is expected to increasingly exceed that of credit cards, with a projected 46 billion debit card transactions compared to 30 billion credit card transactions by 2012. Data from *The Nilson Report*, November 2008, Issue 914.

17 According to the *2007 Federal Reserve Payments Study*, the average value per signature debit card transaction decreased by 4.3 percent per year in constant dollars from 2003 to 2006, and the average value per PIN debit card transaction decreased by 3.9 percent per year during the same time period. See *The 2007 Federal Reserve Payments Study: Noncash payment trends in the United States, 2003-2006*, Federal Reserve System

Overdraft Explosion: Bank fees for overdrafts increase 35% in two years

(December 10, 2007), available at http://www.frbsecurities.org/files/communications/pdf/research/2007_payments_study.pdf. The *2009 Debit Issuer Study* found that 27 percent of debit card transactions in 2008 were for less than \$10. See *Despite Recession, Card Issuers Expect Debit Growth in 2009; 2009 Debit Issuer Study, commissioned by PULSE, reveals greater PIN debit use and lower fraud losses*, Pulse Network (June 4, 2009), available at https://www.pulsenetwork.com/public/upload/storage/file750/file/2009-Debit_Issuer_Study_Release.pdf.

18 *Recrafting the Checking Account Product Line: Responding to the Unhappily Unbanked*, First Manhattan Consulting Group (2009).

19 The 2007 Consumer Expenditure Survey conducted by the Bureau of Labor Statistics finds that households spend, on average, \$118 on reading materials, \$143 on cereal, \$152 on postage and stationery, \$190 on fresh vegetables, \$202 on fresh fruits, and \$231 on major appliances. To calculate the total consumer expenditures, we multiply these amounts by the 120,171,000 U.S. households. For more information, see <http://www.bls.gov/cex/>. A similar analysis was performed by consulting firm Oliver Wyman, see Aaron Fine, Andrew Dresner, & David Goldberg, *Insufficient Funds: The outlook for deposit fees and implications for banking institutions*, Oliver Wyman (2009).

20 See survey findings in Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending (April 16, 2008), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf>.

21 Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending (April 16, 2008), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf>.

22 CRL found that banks and credit unions collected \$17.5 billion in overdraft fees in 2006, while only extending \$15.8 billion in credit. See Eric Halperin & Peter Smith, *Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans*, Center for Responsible Lending, (July 11, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/out-of-balance-report-7-10-final.pdf>.

23 In our 2006 study, we found that credit extended equated to 90.1 percent of total overdraft fees. Using these same assumptions for 2008, banks and credit unions collecting \$23.7 billion in overdraft fees would extend only \$21.3 billion in credit (\$23.7 billion * 90.1% = \$21.3 billion). See the appendix of Eric Halperin & Peter Smith, *Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans*, Center for Responsible Lending (July 11, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/out-of-balance-report-7-10-final.pdf> for methodology.

24 Consumers who overdraw their accounts must repay the amount of credit extended in order to bring their account balance back above zero as well as the fees incurred. This equates to \$45 billion dollars (\$21.3 billion in credit + \$23.7 billion in fees).

25 The Federal Reserve is considering changes to Regulation E which would impact overdraft loan programs, see <http://edocket.access.gpo.gov/2009/pdf/E8-31184.pdf>.

26 Reforms to overdraft loan programs have been introduced by Rep. Carolyn Maloney (D-NY) as HR 1456, the Consumer Overdraft Protection Fair Practices Act.

27 For example, in most circumstances, Citigroup will not approve a debit card transaction or charge an overdraft fee if the transaction if the customer lacks adequate funds.

28 Previous CRL research has found that consumers pay their overdraft fees and bring their accounts back above zero within 2-5 days, on average. See Eric Halperin, Lisa James, & Peter Smith, *Debit Card Danger: Banks offer little warning and few choices as customers pay a high price for debit card overdrafts*, Center for Responsible Lending (January 25, 2007), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/Debit-Card-Danger-report.pdf>.

29 Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options*, Center for Responsible Lending (April 16, 2008), available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf> and *Overdraft Fees and Opting In: A survey of consumer preferences*, Center for Responsible Lending (March 2009) available at <http://www.responsiblelending.org/overdraft-loans/research-analysis/consumer-preference-opt-in.pdf>.

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