October 16, 2006

Steve Hanft
Legal Division
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
VIA EMAIL: comments@fdic.gov

Re: Study of Overdraft Protection Programs

Dear Mr. Hanft:

The Center for Responsible Lending (CRL) and the Center for Community Self-Help (Self-Help) appreciate the opportunity to comment to the Federal Deposit Insurance Corporation on its proposed study of overdraft protection programs in state nonmember financial institutions.

CRL is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices, and by promoting responsible lending and access to fair terms of credit for low-wealth families.

CRL is an affiliate of Self-Help, which also includes a credit union and a loan fund. Self-Help has provided more than $4.5 billion in financing to enable over 50,000 low-wealth borrowers in 47 states buy homes, build businesses, and strengthen community resources. Self-Help has assets of some $2 billion and our loan loss rate has been less than one half of 1 percent per year. Self-Help also has experience as a provider of deposit accounts. Self-Help Credit Union is the nation's largest community development credit union, with some $260 million in assets. Over the past two years, it has expanded its retail operations across North Carolina by merging with four full service local credit unions: Firestone, Scotland, Cape Fear, and Wilson. CRL's affiliation with Self-Help provides CRL with important insight into lenders' needs, responsibilities to communities, and the time required to comply with information requests such as the one proposed by the FDIC.

We commend the FDIC for its leadership in seeking to collect data from financial institutions on overdraft products and depositor usage patterns. This information is crucial to informed regulatory decision-making that will promote the safety and soundness of the banking sector, and safeguard the rights of consumers. Overdraft fees earn banks in excess of $10.3 billion a year, and the effectiveness of "discretionary" overdraft programs in generating sizeable fee income has fueled their mercurial rise in popularity. More than 3,500 financial institutions use fee-based overdraft services, a jump of nearly 80 percent from 2003 to 2005. Overdraft lending has potential to undermine the financial security of both lenders and consumers because,

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research suggests, it is derived in large part from the assets of low- and moderate-income depositors.[1]

The FDIC has acknowledged, along with other regulators, that "when overdrafts are paid, credit is extended," which subjects overdraft loan programs to safety and soundness considerations.[2] The risks inherent in excessive use of high-cost, short-term overdraft lending to individuals who may lack sufficient repayment capacity require rigorous oversight. But the information necessary to perform this oversight has been lacking. Data on overdraft lending is not included in bank reporting requirements. As a result, research to date has been restricted to consumer-provided information that is expensive, difficult to obtain, fragmented, and incomplete.[3] Because data on overdraft lending has been inadequate, regulators have not had the benefit of being able to perform independent empirical analyses, and instead must rely on information selectively provided by industry. The FDIC's proposed data collection will, for the first time, permit a federal regulatory agency to conduct a thorough, objective study of overdraft lending, identify problem areas, and institute appropriate solutions. The FDIC must have this information in order to properly exercise its supervisory authority and to protect consumers. We do not believe that the collection and reporting of this data will overly burden the banks, nor will the anticipated burden outweigh the benefits of access to this otherwise unobtainable information.

A. Collection of information on overdraft products and usage is necessary for the FDIC to perform its proper functions under the Federal Depository Institution Act.

The FDIC has primary regulatory responsibility for ensuring the safety and soundness of federally-insured state-chartered banks, as well as promoting compliance with consumer protection and fair lending laws.[4] In this regard, the FDIC issued a payday lending guidance that it deemed "necessitated by the high risk nature of payday lending and the substantial growth of this product."[5] Overdraft loans share many of the inherent risks that make payday lending a threat to bank stability and consumer welfare. Furthermore, overdraft fees have become the lead driver of service fee income, accounting for more than a quarter of service fee revenue, and

[1] *See generally*, Sheila Bair, *Low-Cost, Payday Loans: Opportunities and Obstacles*, The Annie E. Casey Foundation (2005); Jacqueline Duby, Eric Halperin & Lisa James, *High Cost & Hidden From View: The $10 Billion Overdraft Loan Market,* Center for Responsible Lending, Issue Paper No. 9 (May 26, 2005); Jean Ann Fox & Eric Halperin, *New Study: Most Big Banks Level High "Courtesy Overdraft" Loan Fees Without Consumers' Permission*, Consumer Federation of America (2005); Lisa James & Peter Smith, *Overdraft Loans: Survey Finds Growing Problem for Consumers*, Center for Responsible Lending, Issue Paper No. 13 (Apr. 24, 2006); Matt Fellowes, *From Poverty, Opportunity: Putting the Market to Work for Lower Income Families*, Brookings Institution (2006).

[2] Joint Guidance on Overdraft Protection Programs, 70 Fed. Reg. 36,9127 (Feb. 24, 2005).

[3] CRL had to rely on self-reported consumer data for its April 2006 study, which revealed sufficiently compelling evidence of the debt trap effect and disproportionate impact of overdraft loans on lower income and minority groups to warrant further investigation of chronic overdrafters. Nevertheless, this type of data collection has empirical limitations that are exacerbated by a basic lack of consumer knowledge on how the system works. For example, most consumers may not know how much they were charged per overdraft, which transactions triggered overdrafts, whether they would have qualified for a less costly line of credit, and whether some overdrafts could have been avoided if the bank processed transactions chronologically. Furthermore, consumers may not be able to accurately recall the exact number of overdrafts they have incurred over a given time period

[4] Federal Deposit Insurance Act, 12 U.S.C. § 1811 et seq.; Federal Trade Commission Act, 15 U.S.C. § 45 et seq.

[5] FDIC Payday Lending Programs Revised Examination Guidance, FIL-14-2005 (Mar. 14, 2005).

steadily rising.[6] Given the dangerous similarities between overdraft and payday lending, the FDIC is obliged to examine the nature of overdraft lending and its potential consequences for financial institutions and consumers in order to arrive at reasoned policy decisions that reduce undue risk. The first step in this process is to collect comprehensive data on overdraft products and depositor usage patterns from the institutions that administer these programs.

Safety and Soundness

Financial institutions are required to establish prudent risk-management policies that will minimize the potential for loss inherent in every decision to lend money. The FDIC is mandated to protect depositors by setting standards for capital adequacy, charge-offs, credit weighting and other factors that can be adjusted to reduce an institution's loss exposure.

Overdraft lending raises many of the safety and soundness concerns common to its non-institution-based cousin, payday lending. Overdraft loans are unsecured high-cost, short-term credit with finance charges that can reach an APR of 300 percent to 1,200 percent or more.[7] Overdraft lending most often targets the same market segment targeted by payday lenders: low- and moderate-income individuals who have little or no savings and struggle to make ends meet from paycheck to paycheck.[8] In fact, automated overdraft program vendors and industry consultants advise banks that they can maximize fee income by, for example, opening up branches in supermarkets that serve low- and moderate-income families, or looking to their outlets in economically depressed neighborhoods with high unemployment for the best yields.[9] Even though overdraft lending is aimed at the most vulnerable borrower profile, like payday lending, little or no credit underwriting is performed.[10] By way of comparison, the FDIC payday guidance highlighted "limited or no analysis of repayment capacity and the unsecured nature of the credit" among the "well-defined weaknesses that jeopardize the liquidation of the [payday loan] debt." It further noted that "payday loan portfolios are characterized by a marked proportion of obligors whose paying capacity is questionable," and classified them as Substandard.[11]

The FDIC cannot address the comparable risks associated with overdraft lending in a meaningful way without knowing how overdraft products are structured and implemented, the

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[6] Duby, Halperin & James, *supra*; *Monthly New Product Bulletin*, Informa Research Services (Aug. 2006). Informa predicts that NSF/OD fees will continue their four-year climb and that banks will increasingly shift to tiered fees to generate more revenue by charging higher rates to repeat overdrafters.

[7] Howard Mason, *Impact of Regulatory Best Practices on Bounce Protection Services and NSF Fees*, Bernstein Research Call (Feb. 17, 2005). Bernstein attributed the stagnation in bank service fee income in 2004 to the realization by consumers that payday loans were a cost-effective alternative to overdrafts, and forecast further declines in overdraft and NSF revenues as ATM and POS disclosures improve and consumers are given the opportunity to cancel potential overdraft transactions. By August 2006, however, banks were reporting particularly strong fee income that on average rose some 27% annualized from the first quarter of the year. Some attributed the rise to overdraft fee increases, tiered fee structures, and more customers overdrafting. Matthias Rieker, *Why the Jump in Big-Bank Fee Revenue?*, AMERICAN BANKER, Aug. 7, 2006, at 9.

[8] James & Smith, *supra.* Based on a survey of 3,310 checking account holders. *See also, Payday Loans and Similar Short-Term Advance Facilities*, Bretton Woods, Inc. (Oct. 2004), at 8.

[9] Alex Berenson, *Some Banks Encourage Overdrafts, Reaping Profit*, N.Y.TIMES, Jan.22, 2003; Ralph Haberfied, *Breaking the $200 Barrier: With the Right Strategy That's How Much A Bank Can Generate in Fees Per Account*, BANKSTOCKS.COM, Sept. 25, 2001, (suggesting an annual target of $140 per account).

[10] 70 Fed. Reg. 36,9127 (Feb. 24, 2005), *supra*.

[11] FDIC FIL-14-2005, *supra*.

degree of risk they pose, who is using these products the most and why, their importance in generating income, their suitability for intended users and what credit alternatives are available. A review of overdraft product and usage patterns may show, for example, that institutions are unreasonably exposing themselves to potential loss by failing to incorporate creditworthiness as an eligibility factor for overdraft coverage, a determination that might call for remedial measures. Similarly, the data may indicate a need for guidelines on overdraft credit concentration, capital adequacy and loss allowance, or the development of other strategies for improved risk management. To the extent that these issues have already been addressed by regulators, the data may show that modifications of existing rules or guidance are necessary. As automated overdraft programs proliferate and some banks put increased pressure on service fee income to replace declining interest earnings, it becomes ever more urgent for the FDIC to determine whether banks are behaving responsibly in the administration of overdraft lending programs—and to take regulatory action if they are not.

For example, the absence of credit underwriting can have deleterious consequences for consumers as well as lending institutions: it creates the potential for saddling individuals with a cumulative overdraft debt burden that far outweighs the benefit of the credit or their ability to repay. Because overdraft customers tend to have persistent cash-flow deficiencies, they are especially vulnerable both to the increased indebtedness resulting from overdraft fees and the lump sum set off taken from the next deposit to recoup the loan. As with payday loans, the combined strain of high finance charges and a short repayment period plunge cash-strapped overdraft borrowers into a cycle of chronic need and protracted debt. The FDIC recognized the danger of creating such a debt trap in its payday guidance, cautioning that "providing high-cost, short-term credit on a recurring basis to customers with long-term credit needs is not responsible lending; increases institutions' credit, legal, reputational, and compliance risks; and can create a serious financial hardship for the customer."[12] Accordingly, the FDIC prohibited lenders from offering payday loans to customers who had used them for more than three months in the previous 12-month period, recommending instead that these customers be referred to more appropriate longer-term credit products, if available.[13]

A survey conducted by CRL found that just 16 percent of overdraft loan customers pay 71 percent of overdraft fees—some $7.3 billion a year—suggesting that a core group of households are using overdraft loans regularly to meet recurrent short-term credit needs.[14] Investment research service AllianceBernstein estimates that 20 percent of checking accounts nationwide generate 80 percent of overdraft fees.[15] The only statewide study conducted to date revealed that as much as 27 percent of chronic overdrafters were charged fees at least twice a month, and as much as 13 percent were charged fees six or more times a month.[16] These

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[12] *Id*.
[13] *Id*.
[14] James & Smith, *supra*.
[15] Andrew Bary, *The 1,000% Solution: A Crackdown on Astronomical Fees for Overdrafts Could Squeeze Banks,* BARRON'S, Feb. 28, 2005.
[16] Washington State Department of Financial Institutions, *Overdraft Protection Programs* (Sept. 19, 2003), *available at* http://www.dfi.wa.gov/news/Legislative%20report.pdf.

findings are consistent with those of other researchers and analysts.[17] Clearly, overdraft lending is having negative credit consequences for the weakest borrowers.

At the same time, financial institutions are continuing to expand their overdraft loan activity. From 2000 to 2003, the number of checks returned for insufficient funds dropped at nearly twice the annual rate that check use declined overall, indicating that banks were increasingly covering overdrafts.[18] From 2003 to 2005, the number of financial institutions using vendor-based automated overdraft loan programs grew 80 percent, totally some 3,500 institutions.[19] Banks that institute the parameters typically set in automated overdraft programs—account opened for at least 30 days, account holder not in default to the bank, regular deposit activity—are expected to increase the number of overdrafts by as much as 200 percent, with some vendors promising as much as a 400 percent gain.[20] But while automation has reduced the cost of overdraft lending, average overdraft fees have crept steadily upward, rising 24 percent from 1998 to 2006.[21] In addition, more and more banks are switching from flat fees to a tiered fee structure that imposes higher charges for more frequent overdraft use and some banks assess a "sustained overdraft fee" for each day an account remains negative.[22] The combination of greatly increased overdraft activity and rising fees could be a warning sign of imprudent lending practices.

Meanwhile, banks are permitting overdrafts in ways never before possible. Financial analyst Sheshunoff estimates that overdraft volume doubled over the past 10 years, in part due to the transition to electronic transactions, which on the one hand has created an imbalance in the speed of withdrawal versus deposit processing, making it more difficult for customers to keep track of their balances, and on the other opened previously untapped avenues for generating overdrafts.[23] POS debit card use, in particular, has experienced explosive growth over the past decade, jumping 20 percent a year since 1996 and eclipsing check use, which continues to shrink at about 3 percent annually.[24] From 2001 to 2003, consumers made 42.5 billion debit card

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[17] One payment system consultant estimates that 5 percent of overdraft customers are repeat users who are "caught in a downward draft, where punitive fees…push them further down into the hole." Bill Stoneman, *Sizing NSF Fees*, BAI BANKING STRATEGIES, VOL. LXXXI, NO. 1 (Jan.-Feb. 2005).
[18] *Id*. The 2004 Federal Reserve Payments Study reported that 189 million checks were returned in 2003, down from 240 million in 2000, a compounded annual decline of 7.7 percent. The total number of checks written over the same period dropped 4.3 percent.
[19]Duby, Halperin & James, *supra*; Jean Ann Fox & Patrick Woodall, *Overdrawn: Consumers Face Hidden Overdraft Charges From Nation's Largest Banks*, Consumer Federation of America (June 9, 2005).
[20] "Achieve a fee income increase of up to 400% within four months." *Overdraft Privilege Service: A Win-Win Solution to Generating Revenue While Building Customer Loyalty*, *available at http://www.strunklp.com/links.asp?id=128274&page=2*, scroll down and click on the title of the article. *KYCUL Endorses Floyd & Associates for Overdraft Privilege Program*, Sept. 21, 2004, at 2, *available at* http://www.jmfa.com/%5Cuploads%5Ccontent%5C115200511857.pdf. Comment of the American Bankers Association on Proposed Amendments to Commentary to Reg. Z Truth in Lending Act, Jan. 27, 2003, *available at* http://www.federalreserve.gov/SECRS/2005/March/20050331/R-1217/R-1217_181_1.pdf.
[21] The average fee charged for overdrafts increased 24% to $26.90 from 1998 to 2005. Libby Wells, *Checking study: Fees for bounced checks rising*, BANKRATE.COM, Oct. 19, 1999, *available at* Bankrate.com/brm/news/chk/19991019.asp. Greg McBride, *Checking survey: ATM fees hit a record high*, BANKRATE.COM, Dec. 1, 2005, *available at* http://www.bankrate.com/brm/news/chk/chkstudy/20051201a1.asp.
[22] Informa, *supra*.
[23] Stoneman, *supra*.
[24] Ron Borzekowski, Elizabeth Kiser, Shaista Ahmed, *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response*, Federal Reserve Board, Washington, D.C. (Apr. 2006).

transactions, exceeding the volume of credit card transactions over the same period.[25] It is becoming easier to overdraft—casually, inadvertently, automatically—than ever before.

The FDIC bank study would shed more light on the extent to which overdraft loans create a debt trap for consumers and, if so, identify opportunities for corrective action. In its payday lending guidance, the FDIC recommended that banks adopt certain management practices to avoid getting borrowers caught in a cycle of debt and reduce the overall credit risk of payday lending. These included limiting the number and frequency of loans to a given customer, refraining from offering simultaneous loans to a customer and establishing "cooling off" periods between loans. An in-depth look at recurrent overdraft use would signal whether similar steps would be beneficial in the overdraft lending context.

Compliance

The FDIC is responsible for ensuring that the financial institutions it supervises protect consumers by complying with all applicable statutes and regulations, at both the federal and state levels. The federal laws most frequently implicated in the provision of overdraft loans are the Federal Trade Commission Act, which prohibits unfair or deceptive trade practices, the Equal Credit Opportunity Act, which bars discrimination in the extension of credit, and the Truth in Lending Act, including the provisions that govern charge cards.[26]

Consumer protection concerns are most apparent in circumstances where overdrafts can be avoided by banks, but the banks decline to do so. Many institutions allow account holders to overdraft at all electronic venues, including ATM, point-of-sale, internet, telephone, scheduled automatic debits and funds transfers. Although a large portion of banks have converted to real-time networks, and the number is growing daily, banks do not generally alert customers in the course of performing an electronic transaction that it may exceed their balance and incur a fee. The failure to warn or, alternatively, disallow a transaction that would result in an overdraft, is perhaps most egregious at ATMs and PIN-based points of sale, where relatively small dollar value overdrafts trigger fixed fees equivalent to triple and quadruple digit APR's. A bank's inaction at a juncture where it could spare the customer significant expense may well rise to the level of an unfair and deceptive trade practice, especially in light of the surge in debit card use.[27] After all, regardless of how some institutions persist in characterizing their "bounce protection" services, saving a customer the expense of a returned check is plainly not at issue because a check is rarely involved.[28] Preliminary results of research currently underway by CRL involving some 5,000 households and more than three million banking transactions has revealed that ATM

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[25] Debit and Check Card Consumer Protection Act of 2006, S. 3978, 109th Cong. (2006).

[26] Federal Trade Commission Act, § 5, 15 U.S.C. § 45, enforced by the FDIC pursuant to § 8 of the FDIA. *See In Re Washington Mutual Overdraft Protection Litigation*, No. 04-55885, (9th Cir. Sept. 7, 2006) (holding that ATM cards used in an overdraft program could fall under the TILA definition of a charge card).

[27] The Joint Guidance on Overdraft Protection Programs acknowledged the advisability of alerting customers that an ATM transaction may cause an overdraft and incur fees by recommending that, wherever possible, banks should display a warning and permit customers to affirmatively choose whether to continue or cancel the transaction.

[28] One bank's promotion of its overdraft program: "At times, unanticipated expenses or unforeseen problems can leave customers with too little cash in their checking account. Having a check returned due to insufficient funds can be an embarrassing and humiliating experience. At Metropolitan National Bank, we want to do our part to save the customer from such an experience." *Available at* http://www.metbank.com/personal/other/bounce_protection.asp. The customer information goes on to assert that "bounce protection" "is not a loan of any kind" and that "no interest will be charged," although there is a finance fee of $28.74 for each item.

and debit card transactions outstrip checks as a source of overdrafts by four to one. It is worth noting that in a nationwide poll of 1,000 adults, 82 percent responded that allowing overdrafts at ATMs without the account holder's approval was "unfair;" 63 percent felt it was "very unfair."[29]

The widespread implementation of automated overdraft loan programs also begs the question of whether banks are fostering irresponsible—and perhaps illegal—depositor behavior by creating reliance on overdraft loans. Automation has transformed what was traditionally an ad hoc practice into one that is readily predictable: the system is designed to approve all overdrafts that meet specified account eligibility criteria and credit limits, and deny all others. In theory, customers cannot be sure a given overdraft will be covered because the bank retains "discretion" over whether or not to do so. But those who periodically exceed their balances and invariably receive credit learn by experience that they can depend on overdraft loans. Research conducted by CRL and other groups indicate that a significant portion of overdrafters are repeat users, suggesting some degree of reliance.[30] Indeed, because banks stand to reap sizable excess income from overdraft fees they have a powerful incentive to promote dependency, even when a linked account option or line of credit would be more appropriate and less costly for the customer. If banks are encouraging imprudent financial behavior, it would certainly raise unfair and deceptive practice concerns. Moreover, if banks are channeling otherwise creditworthy customers into high-cost overdraft loans rather than low-cost lines of credit, it may be a sign of discrimination on a prohibited basis. Customer account data and overdraft usage patterns will answer some of these questions.

But whether overdraft loan programs infringe on consumer rights is not the only issue. Overdraft loans may be legal and still fail to meet the credit needs of the communities in which the lenders are located, as defined by the Community Reinvestment Act (CRA).[31] As the FDIC noted in its payday guidance, the fact that only legal violations will adversely affect an institution's CRA rating does not relieve lenders of the responsibility to act consistent with CRA goals.[32] To do otherwise would essentially thwart the purpose of the law and diminish its ability to safeguard access to convenient and appropriate depository services for all community members. As an example of payday lending that is inconsistent with the CRA, the FDIC cited "loans to individuals who do not have the ability to repay, or that may result in repeated renewals or extensions and fee payments over a relatively short span of weeks." Because overdraft loans do not involve credit underwriting and, according to research findings, are being given to some "individuals who do not have the ability to repay," the FDIC, and the other bank regulators, should be similarly concerned about the responsiveness of overdraft lending to community needs.

By the same token, regulators have indicated, "a properly structured payday loan alternative program … would probably warrant CRA credit."[33] Although banks do not promote overdraft coverage as a payday loan alternative, they have positioned overdraft loans to appeal to the same market segment. If overdraft loans were designed and priced more competitively, they could offer consumers who currently resort to payday loans a viable credit choice. The FDIC's

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[29] Fox & Woodall, *supra*. National survey poll of 1,000 representative adults commissioned by CFA from Opinion Research Corporation International.
[30] *See* Duby, Halperin & James, *supra*; James & Smith, *supra*.
[31] Community Reinvestment Act, 12 U.S.C. § 2901 et seq. (1997).
[32] FDIC FIL-14-2005, *supra*.
[33] Bair, *supra*, at 16.

data collection may identify ways in which regulators can play a role in creating incentives for banks to make their overdraft products more consumer-friendly.

B. The estimated burden of the information collection is reasonably accurate and is, in any event, outweighed by the value of the information to protecting consumers.

The FDIC estimates it will take each respondent an average of three hours to respond to the survey questions, and 40 hours to respond to the micro-data collection. Based on Self-Help Credit Union's experience as a lender and provider of deposit accounts, we know that the respondent financial institutions are highly likely to possess the data sought by the FDIC in an easily accessible electronic format. Banks need to conduct risk analyses in order to offer overdraft loans. Most overdraft software packages, which enable institutions to tailor loan parameters, evaluate results and make adjustments to improve performance, are fully capable of handling the micro-data collection sought by the FDIC and producing reports in the desired format. In fact, overdraft program vendors advertise their operational and management software packages as well-equipped to provide integration with core processors, analytics, history tracking, program performance results, custom reports and other features.[34] Those banks that do not purchase vendor programs have developed in-house systems capable of performing the same necessary functions.

Since July 2006 when the Federal Reserve Board's new Regulation DD rules went into effect, financial institutions that advertised their overdraft loan programs have had to comply with new overdraft fee disclosure requirements. These stipulate that banks must inform depositors on their regular account statements of the year-to-date and month-to-date accumulations of all overdraft service fees they were charged, whether generated by batch, ATM, PIN-based debit, on-line transactions, telephone transactions, ACH/EFT, or teller services—even those related to linked account and line of credit transfers.[35] Those institutions with insufficient software capability to meet the new requirements will have had to update or convert their systems by now.

Furthermore, since February 2005, financial institutions have been subject to the Joint Guidance on Overdraft Programs promulgated by the regulatory agencies. The Guidance requires institutions to, among other things, monitor individual customers' overdrafts to determine whether a customer has become an undue credit risk. The Guidance also states that "[r]eports sufficient to enable management to identify, measure, and manage overdraft volume, profitability, and credit performance should be provided to management on a regular basis."[36] This makes it even more likely that respondent banks will be able to access the data requested by the FDIC, and do so relatively easily. If an institution does not have ready access to this information, it may indicate that it would have difficulty complying with the examination guidance.

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[34] *See*, *for example*, Strunk & Associates, *available at* http://www.strunklp.com.
[35] Regulation DD, Truth in Savings, 12 CFR Part 230.
[36] 70 Fed. Reg. 36,9127 (Feb. 24, 2005), *supra*.

Self-Help does not provide overdraft loans. It pays overdraft items only if the member has an automatic transfer set up with a linked savings account, or an overdraft line of credit. Moreover, Self-Help is a relatively small financial institution by bank standards. Nevertheless, Self-Help, with its existing software architecture would require no more than 40 hours to provide the micro-data reports requested by the FDIC.

There are 37 micro-data questions in all, of which 32 are straightforward, ask for data stored in existing fields, and would require no more than a total of 10 staff hours to answer. The remaining five questions would require us to implement additional protocols to accumulate the data in the required format. Table IA questions 1 through 14 and 16 through 20 ask for standard customer and account profile information needed to open accounts and service them properly, and in data fields commonly used by banks. Table IA question 15, which asks whether an account holder regularly receives direct deposit Social Security benefits, might require the respondent to conduct an analysis of transaction history to identify and tag Social Security recipients, if the information were not already collected in this form. The FDIC has made this process easier by excluding those customers who receive benefits by check, which would otherwise involve a more laborious review of check images.

Table IIA questions 1 through 4, 7 and 8 also ask for information that is readily accessible and simply needs to be downloaded into a report. Questions 5, 6 and 9, which ask about NSF triggers and decisions on payment and fee waivers may require some analysis. Again, the underlying raw data would be available to banks, and it is likely that they already collect it in the form requested in order to conduct statistical analyses needed to improve the performance of their overdraft loan programs. Table IIIA questions 1 through 6 can be answered automatically without additional coding or protocols. Question 7 on the number of NSF items covered within the overdraft occurrence may require further programming to enable collection and reporting.

Self-Help has calculated that it would take no more than five hours to answer each question requiring analysis. This estimate is based on the assumption that the FDIC is not making a one-time request for data collection, but would continue to monitor these aspects of overdraft lending. Therefore, we have included in our estimate the time necessary to create counters, where they do not currently exist, to accumulate data based on these variables and report going forward.

We are confident that the FDIC is sufficiently knowledgeable about institutional systems of record keeping and reporting capabilities to arrive at a reasonably reliable estimate of the response burden. Obviously, any simple policy information, such as overdraft loan eligibility standards, criteria for suspension of customers who pose undue credit risks, and others, would take only so long to produce as the time needed to photocopy the relevant documents.

In any event, the value of the study far outweighs the anticipated burden on banks and data service providers of responding to the FDIC data collection request. As already mentioned, industry has made little data available on overdraft policies, products, practices, alternatives, the relative importance of overdraft fee income, underwriting, user behavior and the like. The FDIC noted that the information it seeks is “not currently included in the Call Reports or other standard periodic regulatory reports.” Industry has kept a tight hold on its overdraft lending data, arguing that much of it cannot be disclosed on proprietary grounds. While some information, such as service fee income, is publicly available, it is not reported in a disaggregated form that would make the overdraft fee portion identifiable. This has made it impossible to gauge the true significance of overdraft fees in banks' revenue stream. There are no proxies for the information that the FDIC is seeking, and there is no avenue to obtain it other than a regulatory request for data collection.

Even consumer-side information on overdraft lending is difficult and expensive to come by. Account data and customer surveys must be purchased at a cost that is beyond the reach of most research and policy groups. Even when there is money to buy data—CRL has purchased information on thousands of account holders and commissioned several surveys—the information that is commercially available represents just a fraction of what the FDIC is requesting from banks. Because of the financial and physical constraints to acquiring information on overdraft loans and consumer impact, relatively little empirical research has been conducted in this area to date.

CRL has made extensive efforts to ferret out and analyze information on overdraft lending and its impact on consumers. We reviewed publicly accessible industry documentation and analyst reports to determine the size and growth pattern of the overdraft industry. We followed this up by commissioning a telephone survey of 3,310 checking account holders, which found that just 16 percent of recurrent overdraft loan users were responsible for 71 percent of overdraft fees, and just 6 percent of customers paid almost half of all overdraft fees. Our survey also revealed that recurrent overdraft users—those who incurred overdraft fees in the previous six months—tended to be non-white, 35 to 39 years old, and have a household income of $30,000 to $35,000. These results were consistent with research findings of other groups. The results of our latest study, based on transaction level data from 5,000 households are still forthcoming, yet preliminary findings show ATM withdrawals or PIN-based point-of-sale purchases are by far the largest cause of overdrafts, highlighting the importance of these mechanisms for generating fees and the potential benefit to consumers of either requiring ATM and POS warnings or denying overdrafts entirely at these transaction points.

However, the sheer size of the overdraft market and banks' ever-growing dependence on fee revenue, as described earlier, demand close regulatory scrutiny, and industry-side information on overdraft programs is vitally important to the effectiveness of FDIC oversight. Overdraft fees already bring in over $10.3 billion a year and account on average for more than one quarter of all service fee income.[37] Banks are looking increasingly to high-profit-margin overdraft lending as a lucrative income generator. Already in 2003, a majority of the 331 banks surveyed by the American Bankers Association named overdraft lending as their most profitable service after residential mortgages.[38] The explosive growth in the adoption of automated overdraft loan programs over the past few years was premised in large part on the prospects of dramatically boosting fee income.[39] The FDIC cannot afford to let overdraft lending continue to

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[37] CRL estimate based on an analysis of industry data. *See* Duby, Halperin & James, *supra*.

[38] Laura K. Thompson, *Bank Overdraft Programs Rankle Consumer Groups*, AMERICAN BANKER, May 20, 2003. Reporting on findings from The American Bankers Association Community Bank Competitiveness Survey Report, Feb. 2003.

[39] For example, Pinnacle Financial Strategies advertises its automated overdraft program as "designed to dramatically increase fee income through expanded use of checking account overdrafts," and asserts that banks using its services have increased NSF income on average 80 percent over just 18 months. *Available at* http://www.wib.org/wibsco_bounce.html.

expand without assessing the risks involved and, if necessary, imposing reasonable restraints on imprudent lending behavior whose potential for disastrous consequences is proportional to overdraft lending's share of banks' revenue and the number of loans made.

C. The utility of the information can be enhanced by making it publicly available

Consumers stand to gain whenever regulators and lawmakers are better able to assess and act against abusive or unfair practices. In the mortgage sector, for example, the disclosure of industry data has benefited consumers by revealing previously unacknowledged abuses that exploited vulnerable borrowers. Statistics released under the Home Mortgage Disclosure Act allowed researchers to disprove assertions that lack of creditworthiness among these borrowers made them eligible only for higher-rate subprime loans.[40] These revelations have prompted lawmakers to propose legislation that would rein in this and other predatory lending practices that pervade the subprime mortgage industry, as well as allowed regulators to focus their enforcement resources on the lenders with the greatest disparities.[41] Likewise, disclosure of data on overdraft products and depositor usage is certain to point to structural and operational deficiencies that can and must be addressed by legislators and regulators.

In addition, consumers can also expect public disclosures to stimulate market competition, which will lead to more responsive small loan options. As one researcher noted, "depository institutions have the tools and infrastructure that they could deploy to offer their customers low-cost alternatives to payday loans"[42] As of yet, however, banks have not stepped up to the plate, perhaps because it would mean foregoing some portion of the excess income they enjoy by making high-priced overdraft loans. Once consumers are more fully aware of the extent of overdraft lending and its true impact on their pocketbooks, they may well demand that their financial institutions abandon certain practices and devise other, more suitable products—or they may choose to opt out of overdraft borrowing entirely. Those banks willing to offer their customers credit on more reasonable cost and repayment terms will be able retain or increase their share of the small loan market.

Moreover, the impetus for change may come from the lenders themselves. In the mortgage lending context it has been noted that lenders "can gain an increased awareness of the lending and pricing practices of their organizations, and of their competitors, through analysis of HMDA data. As a result, lenders may take opportunities to compete in areas where the data show concentrations of high-priced lending."[43] Similarly, public disclosure of the overdraft loan data can provide banks with information on the short-term credit needs of customers that are currently not being met by conventional loan programs. Because the FDIC data is more detailed and extensive than anything currently available, it may provoke the combination of consumer awareness, regulator insight, and industry knowledge that can result in a more dynamic marketplace.

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[40] Debbie Gruenstein Bocian, Keith Ernst, Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending (May 31, 2006).

[41] *New Information Reported under HMDA and Its Application I Fair Lending Enforcement*, Federal Reserve Bulletin (Summer 2005). *Available at* http://www.federalreserve.gov/pubs/bulletin/2005/3-05hmda.pdf.

[42] Bair, *supra*, at 38.

[43] Ned Gramlich, Governor, Federal Reserve Board, HMDA Data and Their Effect on Mortgage Markets, Speech before the National Association of Real Estate Editors, Washington, D.C. (June 3, 2005), *available at* http://www.federalreserve.gov/Boarddocs/speeches/2005/20050603/default.htm.

Conclusion

We appreciate the opportunity to comment on the FDIC's proposed study of overdraft lending and again commend the FDIC for their leadership on this important issue. If you have any questions or would like more information, please do not hesitate to contact Jillian Aldebron at 202-349-1868 or by email at jillian.aldebron@responsiblelending.org.

Sincerely,

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