



Testimony of

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on behalf of
Consumers Union
Consumer Federation of America

regarding

**Financial Consumer Hotline Act of 2007: Providing Consumers with Easy
Access to the Appropriate Banking Regulator**

before the

Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives

December 12, 2007

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Chairwoman Maloney and members of the subcommittees, on behalf of Consumers Union¹ the non-profit, independent publisher of *Consumer Reports*,[®] and the Consumer Federation of America,² thank you for this opportunity to testify on the need to streamline the process by which consumers may inquire of, and complain to, financial regulators. Our testimony today offers support for the Financial Consumer Hotline Act of 2007 and provides additional suggestions for improving the existing complaint system. Of course, no complaint system is capable of offering consumers satisfaction when the underlying regulations lend their imprimatur to the abusive and unfair banking and credit practices complained about. To that end, we encourage Congress to follow-up on the work this Subcommittee has done to shed light on some abusive practices, including unfair credit card terms, excessive overdraft "loans" and manipulative debit processing, and to address other abuses such as lengthy check hold times and use of demand drafts that impose unnecessary costs and burdens on consumers, by adopting reforms to remedy the deficiencies in current law that drive many consumer complaints.

We wholeheartedly agree with the concept of establishing a single toll-free number which consumers can call to complain about their bank. Doing so will eliminate unnecessary consumer confusion created by the fragmented regulatory system for financial services that consumers do not, and should not have to understand to get satisfaction. There are five different federal agencies that regulate banks, savings and loans, or credit unions. And so far, there is no single web site, toll free number, or even paper form that consumers can use to complain to any of these agencies regardless of where they do their banking. Consumers should not need to know whether their financial institution is a federally chartered bank, a state-chartered bank, a thrift, or a credit union. They should not need to know that national banks and their operating subsidiaries are regulated by the Office of the Comptroller of the Currency, that savings banks and associations are regulated by the Office of Thrift Supervision, that credit unions are regulated by the National Credit Union Administration, that state-chartered banks are regulated by their state regulator, supervised by the Federal Reserve Board and insured by the Federal Depositary Insurance Corporation. To most consumers, a bank is a bank, regardless of how and by whom it is regulated. The regulatory maze creates not only confusion for consumers, but it promotes unnecessary duplication and costs and reduces the utility of the information that regulators can glean from the complaint and inquiry process.

While establishing a single, initial point of telephone contact for consumers is a strong first step, we urge consideration by Congress and regulators of the following principles we believe should guide reform of the consumer complaint system for financial institutions.

Consumer complaint systems should:

1. Be easy to access and use;
2. Be effective for the individual consumer; and
3. Provide transparent and meaningful results to regulators, policy makers and the public.

Although these principles may seem self-apparent, the current fragmented and opaque complaint system falls short of meeting them. We welcome the Financial Consumer Hotline Act, improvements that the regulators have made to their complaints systems, and the proposals by Comptroller Dugan to improve the complaint system across all regulatory entities. And we offer the following additional recommendations for improvement.

IMPROVE EASE OF ACCESS AND USE

The first step in ensuring ease of access and use is to ensure that artificial barriers are not erected to potential complaints. Such barriers include procedural barriers, such as the process of initiating a complaint and the formalities of the complaint process itself, as well as structural barriers that discourage complaints regardless of the ease of the process.

Procedural barriers

First, consumers must know where to complain. Right now, that's not easy. The current system places the burden on them to determine that. Understandable confusion about which agency to contact can deter consumers from complaining in the first instance. The low number of complaints that federal banking regulators receive relative to the size of the banked population suggests that many consumers don't get through this regulatory maze. Four of the five federal banking regulatory agencies reported nearly 43,000 consumer complaints (excluding inquiries) in 2006, the most recent year for which numbers are available.³ To be sure, OCC's new Helpwithmybank.gov website helps address consumer confusion by first inquiring of the consumer whether their bank is a national bank and giving consumers the means to answer that question. But when the answer is "no," the consumer is then told to travel to up to four additional regulator websites to determine to which agency he or she should complain.⁴ Once at these sites, and after having determined that the agency is the appropriate regulator, consumers must still search out the complaint form and determine how to complain. For example, after arriving at the NCUA consumer page, consumers are asked to determine whether their credit union is state- or nationally chartered.⁵ The Federal Reserve Board advises that consumers may complain to them if they have complaints relating to violations of the Truth-in-Lending Act, Equal Credit Opportunity Act, or Fair Credit Reporting Act—laws few consumers likely understand.⁶ OTS's complaint form advises consumers to send their complaint not to the federal headquarters but to the appropriate regional office.⁷ And although OCC and other regulators will generally accept inquiries about entities they don't regulate and reroute them to the appropriate agency, consumers aren't told that. Faced with the regulatory complaint maze, they may simply give up. When it is too hard to complain, consumers don't get the help they need and the regulatory agencies don't get enough information about what is going wrong for consumers in the marketplace.

Thus, establishing a single complaint telephone hotline will go far in assisting consumers who attempt to navigate the Byzantine regulatory system. However, a single hotline is only a first step. Regulators should establish a single, seamless complaint process using a clearinghouse website, a single complaint form, a single fax number, and a single snail mail address for all complaints and all regulated entities. Doing so would further reduce the procedural barriers created by the fragmented regulatory and complaint system. It would lift the burden on consumers to navigate the maze and leave it to the regulators to determine how to structure the system on the back-end to meet the needs of the different agencies. Consumers would not need to know what type of institution their bank is or even that different agencies regulate this sector. Once an inquiry is sent to such a clearinghouse, it can be appropriately directed to the proper agency. Implicit in the concept

of a clearinghouse is use of a *single* complaint form used uniformly by all the agencies and hosted on the clearinghouse website. While we applaud the recently announced initiative of the regulators to create a working group to create a more streamlined complaint process,⁸ the question the working group should ask is not *whether* to create a single, unified complaint system, but *how* to do so. The working group should establish firm deadlines for their work and a strict timeline for implementation of a unified system.

Second, currently consumers must take extraordinary steps to file a complaint. Regulators will accept *inquiries and comments* via e-mail and phone, but for most agencies, to initiate a formal complaint, consumers must either download a complaint form or have one sent to them, fill it out, sign it and mail or fax it back to the agency.⁹ Use of a written, signed complaint form creates both time delays and a hassle-factor that can deter the filing of complaints and delay their resolution. Formal complaints should be accepted via phone when the consumer has sufficient information or online using a secure Internet connection over which consumers can transmit sensitive personal information such as account numbers. While consumers may ultimately need to mail in documents supporting their complaint, they should be able to initiate the formal complaint process via phone or secure electronic means while those documents are in transit.

Third, complaint forms and website content that are overly complicated or legalistic discourage complaints. For the complaint process to be truly accessible, the complaint form itself should be less legalistic and more user friendly. To be certain, improvements in these forms have been made, but more can be done. For example, the OCC's complaint form unnecessarily refers to an "OMB Control Number" instructing the consumer that they do not need to file a form that lacks an OMB control number.¹⁰ Should the consumer know or care what a control number is? The form also refers to the "complainant," a term rarely used by anyone but attorneys. An accessible form is simple to understand, easy to complete, and convenient to file.

Finally, the importance of hours of service and multi-lingual capacity of call centers cannot be overstated and should be self-evident. While the agencies have expanded their hours of service beyond traditional office hours, consideration should be given to ensuring at least some availability on the weekends.

We urge Congress and the regulators to move quickly to establish a single, unified complaint system that provides convenient, user-friendly one-stop shopping for consumers aggrieved by their banks and a procedurally friendly complaint system.

Structural Barriers

To ensure that accessibility, the structural barriers inherent in the regulatory agencies' current approach to complaints must be eliminated. As a threshold matter, an effective consumer complaint system should not discourage consumers from complaining about a practice. Unfortunately, the advice provided on the agencies' websites and consumer tips implicitly tell consumers they may be wasting their time by complaining. A reasonable consumer would be justified in determining that their complaint would be futile.

First, consumers are routinely advised to try to work out the dispute with their bank as a first step and to contact the agency only if the result was unsatisfactory.¹¹ Any consumer who takes the trouble to look for a federal agency has probably already exhausted all hope of getting the bank to solve the problem. When OCC advises an inquiring consumer to first contact their bank and doesn't later receive a formal complaint, it assumes the complaint is resolved and deems the complaint

withdrawn.¹² Second, consumers are advised that after their complaint is received, the agency will contact the bank and get back to the consumer with their response.¹³ Consumers aggrieved by their bank, and having received no satisfaction from it, are unlikely to be encouraged by a process which suggests that their bank will have the last word.

Finally, although OCC's new website provides substantial information about banking practices on its new website helpwithmybank.gov, the information on the "Get Answers" page of that site itself may discourage complaints. In joint testimony before the Financial Services Committee earlier this year, consumer groups outlined how information on "Get Answers" suggest to consumers that some of their most serious concerns are not worth complaining about because, as the site advises, they are perfectly legal.¹⁴ The testimony identifies answers to questions about check processing order, overdraft loan fees, and check hold times that give rise to overdraft fees that would reasonably discourage consumers from complaining about what they perceive to be abusive practices. Worse, responses not only inform consumers that the bank was within their rights, but often fail to inform consumers that they may be able to prevent the problem in the future. For example, in the overdraft section of Helpwithmybank.gov, OCC never informs consumers about options they may have for avoiding future overdraft fees, such as opting out of the "service" by calling the bank or selecting an alternative, less costly overdraft protection service. As this Subcommittee learned earlier this year, overdraft loan fees cost consumers \$17.5 billion annually and most consumers want both to be warned before the fees are imposed and to be given the option to have transactions denied rather than pay the fee.¹⁵

Questions and answers about credit card abuses, such as trailing interest, penalty interest rates and other frequently complained about practices generally advise consumers to refer to their account agreement — a document written in legalistic terms that provides little guidance. And as with the overdraft advice, consumers are not advised that they may be able to independently negotiate a lower interest rate with the card issuer. Particularly problematic is advice provided that appears inaccurate. For example, under federal law, there are three separate rights for consumers to dispute credit card charges: billing error disputes under Fair Credit Billing Act;¹⁶ protections against liability for unauthorized use under the Truth in Lending Act;¹⁷ and the right to withhold payment for claims against a merchant.¹⁸ Yet the website discusses only one of these rights—the Fair Credit Billing Act, which requires the consumer to send a written notice within 60 days of their monthly bill. It does not inform consumers of their right to withhold payment for claims against a merchant, for example, over shoddy goods. Even worse, when helpwithmybank.gov discusses protections against unauthorized use charges, it incorrectly tells consumers they must dispute such charges in writing and within 60 days of receiving their statement on which the charge first appeared.¹⁹ In fact, consumers can report unauthorized use either in writing or over the telephone and they are not required to do so within 60 days of their bill.²⁰

OCC advises consumers to contact the Consumer Assistance Group if they "cannot find the answer online" and suggests that OCC's assistance will be limited to determining whether the bank violated any laws or regulations. A consumer aggrieved by a practice after learning that the practice is legal, is unlikely to further contact CAG with a comment or inquiry, let alone file a formal complaint. The agencies should make clear that consumers may use the process to complain about general practices without filing a formal complaint and make it easy to do so. While the agencies allow such inquiries, the emphasis on the websites more often invites formal and specific complaints, not general complaints about practices.

By discouraging complaints about currently legal practices that consumers perceive to be unfair and providing information that is of questionable value or incorrect, regulators deny

themselves important information about consumers' interactions with their banks that may flag "tip-of-the-iceberg" abuses and widespread consumer dissatisfaction, counsel in favor of future regulatory guidance and rules, and otherwise inform the agency. Thus, in addition to improving the substantive advice to consumers that goes beyond explaining the letter of the law, regulators should not discourage consumers from complaining about a bank practice even though it may be legal and should clearly and conspicuously inform consumers that they may use the inquiry system to do so.

EFFECTIVE FOR THE CONSUMER

It is clear that the regulatory agencies' complaint procedures produce positive results for some consumers who overcome these barriers and complain.²¹ Yet, for the vast majority of inquiries and complaints, consumers appear to receive little satisfaction. As noted above, the OCC Consumer Assistance Center's first step is to send the complaint to the bank and ask for a response. Thus, the agencies appear to primarily function as a channel for funneling consumer complaints to the institutions, rather than act as a neutral arbiter. More transparency is needed to understand how and under what conditions the agencies will do more than simply accept the bank's response.

Moreover, the regulatory agencies resolve most complaints by simply providing the consumer with more information.²² Whether the consumers' concerns in these cases are actually "resolved" is unclear. Given that much of OCC's web-based advice counsels consumers more about the bank's rights than their own, it is likely that many consumers having their complaints thus "resolved" leave with the view that there is simply nothing they can do. In addition, OCC deems complaints withdrawn when the consumer is advised to contact their bank and the agency does not hear back or when the consumer fails to send in a formal complaint form.²³ In such cases, complaints withdrawn provide no indication that the consumer received any relief from the bank. Finally, of the few complaints pursued by the agencies, most are resolved in favor of the financial institution.²⁴

In addition, consumers are advised that when the dispute is over a question of fact, the agency will be unable to resolve the complaint and the consumer should seek legal counsel.²⁵ The Government Accountability Office recounted OCC's handling of a complaint where the consumer claimed the bank provided inadequate notice about an increase in a credit card interest rate. The bank responded that notice had been provided and the consumer was advised that because the situation involved a question of fact, the agency could not resolve the question. The consumer was told to consider legal action.²⁶ Notwithstanding the fact that most credit card contracts include mandatory binding arbitration clauses, such advice is impractical given that such claims generally involve sums too insignificant to be worth a consumer's while (or any attorney's effort) to pursue individual legal complaints. Where arbitration clauses can be overcome, such negative value claims can generally be pursued only through class litigation. Thus, such advice can hardly be considered to produce effective results for consumers. Indeed, it more likely leaves them without realistic recourse.

While OCC has recently undertaken efforts to evaluate consumer satisfaction with their procedures,²⁷ we urge OCC and all regulators to conduct a thorough evaluation of the effectiveness of their complaint procedures. As a threshold matter, the agencies should evaluate abandonment rates through focus group and other means of testing. If consumers are able to find their way to a website to begin the complaint process, how many abandon the effort, foregoing even initial inquiry to the agency, and why? In addition to abandonment rates, other issues the regulators should evaluate are:

- o How many places did the consumer have to go before reaching the proper channel?

- How much time did the consumer spend finding the proper channel?
- Where the bank was *not* in error, was the consumer given information to avoid the same problem in the future?
- When consumers are told to go directly to the bank, did the bank voluntarily resolve the problem to the consumers' satisfaction? If so, how long did the resolution take and how much time did the consumer devote to resolving it?
- When consumers begin with an initial inquiry but fail to follow up with a formal complaint, why do they fail to do so?
- What percentage of consumers contacting the consumer assistance centers have their concerns *actually*, rather than hypothetically, resolved?
- When consumers are advised that their complaint constitutes a dispute over questions of facts that the agency cannot resolve or is a matter of state law, how frequently do consumers pursue legal action? If consumers are required to pursue legal action through arbitration, how often is the dispute resolved in their favor?

TRANSPARENCY & MEANINGFUL RESULTS

Meaningful Results

An effective complaint system should provide not just meaningful redress for consumers, but also meaningful results for regulators and the Congress by identifying and tracking abusive practices that may demand further regulatory action. Despite the similarities in the complaints each agency receives and the questions they are asked, each agency apparently uses different technologies for coding and tracking systems.²⁸ The existing fragmented complaint systems set up barriers to using complaint data to track abusive practices and identify areas needing regulatory intervention across all agencies. A uniform platform using consistent tracking and coding systems may allow the agencies to better track and identify existing and emerging abuses. We applaud Comptroller Dugan for recognizing the importance of using a common database to track trends in consumer complaints. Any such database must track inquiries as well as complaints. Inquiries can paint a stark picture of the most important issues facing consumers. Moreover coding of both consumer complaints and inquiries should be specific enough to identify the nature of the complaint. That is, an inquiry about overdraft loans should reflect the specific nature of the inquiry such as: the bank's right to charge the fee; limits on the number of fees that can be charged; whether fees can be charged when a deposit is pending; checkhold times that give rise to overdraft fees; order of processing debits; lack of explicit notice that overdraft fees would be charged, et cetera. Coding complaints at that level of granularity gives regulators far more information than coding that merely identifies that a complaint or inquiry related to overdraft loan fees. Data may currently be collected and coded in this manner, but that level of specificity is not reported to the public.

And while the agencies use information collected from consumer complaints against specific banks in preparation for compliance exams, it does not appear that complaint data are necessarily used to analyze the overall pattern of complaints against varying institutions nor used to develop new regulatory guidance or issue new rules for financial institutions.²⁹ The intrinsic value of an effective complaint system is in helping regulators reevaluate whether practices now deemed acceptable should be limited or proscribed.

Transparency

Any effective complaint system should provide transparent results not only for regulators but also for the public and Congress. Regular, consistent and detailed reporting about the specific

nature of complaints and inquiries and the institutions most complained about provide key information to public interest groups and to policy makers.

While the agencies may indeed collect such detailed information, it is not made available to the public. Instead, only general, categorical data is made available. OCC's recent Ombudsman Report noted the percentage of complaints by product and by major category within each product.³⁰ For example, credit cards led products complained about, generating 40% of complaints. Within that product category, complaints received related to TILA, customer service, the Fair Debt Collection Practices Act, Regulation B, and the Fair Credit Reporting Act. But the specific nature of complaints within those categories, which may be valuable for policy makers, is not publicly disclosed. For example, TILA covers disclosure requirements for a broad range of credit card practices, such as interest rates, fees and conditions. A high number of complaints about fees may signal not just that more disclosure is needed, but that the practices themselves may need to be reined in. In addition, the agencies should disclose which institutions receive the greatest number of complaints and inquiries relative to their assets, deposits or credit outstanding. That information is relevant not only for bank examination, but also to consumers and policy makers as well.

CONCLUSION

We urge Congress to enact the Financial Consumer Hotline Act and urge the financial regulators to take immediate steps to institute a unified complaint system that is convenient and effective for consumers and provides meaningful, transparent results to the public, policy makers and regulators.

But federal regulators must do more than improve the complaint system: They must also take steps to limit or prevent the most egregious but currently legal banking practices that consumers complain about. Even the best consumer complaint and reporting system won't provide consumers with redress. It won't stop excessive check hold times, egregious overdraft loan fees, and unfair credit card rates and terms. To make real progress in protecting consumers from the most grievous harms, financial regulators must abandon the proposition that more and better disclosure can solve the problems caused by complex financial products and adopt more stringent regulations to prevent them. And where they lack authority to do so, regulators should recommend to Congress new federal laws needed to protect consumers.

¹ Consumers Union is a non-profit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than four million paid circulation and 3 million online subscribers, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² Consumer Federation of America (CFA) is a non-profit association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumer's interest through advocacy and education.

³ The Office of Thrift Supervision received 5,255 consumer complaints in 2006. *Improving Federal Consumer Protection in Financial Services Before the H. Comm. on Fin. Serv.*, 110th Congress (2007) (hereinafter *Improving Consumer Protection Hearing*) (statement of Scott M. Polakoff, Senior Deputy Director, Office of Thrift Supervision, at 7) *available at* <http://financialservices.house.gov/htpolakoff061307.pdf>. The Federal Reserve Board receives 1,900 complaints about state-chartered banks annually. *Id.*, (statement of Randall S. Kroszner, Member, Board of Governors, Federal Reserve System at 15 –16), *available at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/htkroszner061307.pdf. The Office of the Comptroller of the Currency received 31,827 complaints in 2006. 2006 ANNUAL REPORT, OCC, at 81, *available at* <http://www.occ.treas.gov/annrpt/2006AnRptFinal.pdf>. The Federal Deposit Insurance Corporation received 3,831 complaints in 2006 and redirected 5,604. *Improving Consumer Protection Hearing* (statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, at 13) *available at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/htbair061307.pdf. 2006 data for NCUA was unavailable.

⁴ http://www.helpwithmybank.gov/national_banks/index.html

⁵ *See*, Consumer Complaints, National Credit Union Administration, <http://www.ncua.gov/ConsumerInformation/Consumer%20Complaints/complaintmain.htm>. Once arriving at NCUA's consumer complaint webpage, consumers are given the following dizzying array of options.

"Please choose one of the following options:

- [My complaint concerns a federal credit union](#) (a credit union with the word "federal" contained in its name or any credit union in Delaware, South Dakota, Wyoming or Washington, DC) -- NCUA is the regulator.
- [My complaint concerns a state-chartered credit union](#) (a credit union without the word "federal" as part of its name and not located in Delaware, South Dakota, Wyoming or Washington, DC) -- The state supervisory authority where the credit union's main branch is located will usually be the regulator.
- I'm not certain whether my complaint concerns a federal credit union or a state-chartered credit union. Use [the Find a Credit Union \(link\)](#) to search by name and look up the credit union's charter number. Federal credit unions have charter numbers under 60000, state-chartered credit unions have charter numbers greater than 60000.
- [My complaint concerns a federal savings and loan \(S&L\) or a federally-chartered savings bank \(F.S.B.\)](#) -- Office of Thrift Supervision is the regulator.
- [My complaint concerns a national bank](#) (a bank with a name containing the word "national" or the initials "N.A.") -- Office of the Comptroller of the Currency is the regulator.
- [My complaint concerns a state bank reporting to the Federal Reserve Board](#) (the easiest way to determine this is to call your bank and ask for the name of its regulator) -- Federal Reserve Board is the regulator.
- [My complaint concerns a state bank not reporting to the Federal Reserve Board](#) -- FDIC is the regulator.
- [My complaint concerns a credit reporting agency or lender other than a credit union, bank or savings and loan](#) -- Federal Trade Commission is the regulator [sic]."

⁶ Federal Reserve Consumer Help, Can I File a Complaint, <http://www.federalreserveconsumerhelp.gov/complaintinfo.cfm?info=8>.

⁷ How to Resolve a Consumer Complaint, Office of Thrift Supervision, *available at* <http://www.ots.treas.gov/docs/4/480924.pdf>.

⁸ John Dugan, Comptroller of the Currency, Speech before the Interagency Consumer Complaint Conference, Oct. 15, 2007, available at <http://www.occ.gov/ftp/release/2007-111a.pdf>.

⁹ See, e.g., Customer Complaint Form, Office of the Comptroller of the Currency (OCC Complaint Form), available at <http://www.helpwithmybank.gov/complaints/complaint.pdf> (instructing consumers that complaint forms must be signed and mailed or faxed to OCC); How to Resolve a Consumer Complaint, *supra* note 7 (advising consumers that they must send a written, signed letter to their regional OTS office).

¹⁰ OCC Complaint Form, *supra* note 9.

¹¹ Federal Credit Union Complaints, NCUA, <http://www.ncua.gov/ConsumerInformation/Consumer%20Complaints/fcucomplaints.htm>; How to Resolve a Consumer Complaint, *supra* note 7; Assistance for Customers of National Banks, OCC, at 2, <http://www.helpwithmybank.gov/information/customer.pdf>;

¹² "OCC Consumer Assistance: Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach," Government Accountability Office, GAO-06-293 (2006) at 18.

¹³ See, e.g., Assistance for Customers of National Banks, *supra* note 11 at 5; How to Resolve a Consumer Complaint, *supra* note 7.

¹⁴ *Improving Federal Consumer Protections in Financial Services — Consumer and Industry Perspectives Before the H. Comm. on Fin. Serv.*, 110th Congress (2007) (statement of Travis Plunkett, Consumer Federation of America, on behalf of CFA, CU, CRL, NCLC and USPIRG, at 12) (noting that OCC advises that banks are free to post the largest checks first, triggering more overdraft penalties than if they had been posted smallest to largest; that banks are not required to notify consumers when they have insufficient funds; that banks may post withdrawals before deposits and may delay posting deposits made on Friday until the following Tuesday; and that overdraft fees may be charged when there is a deposit pending).

¹⁵ *Overdraft Protection: Fair Practices for Consumers Before the Subcomm. on Fin. Inst. and Consumer Credit*, 110th Cong. (2007) (statement of Eric Halperin, Center for Responsible Lending at 1, 11 n.13).

¹⁶ 15 U.S.C. § 1666.

¹⁷ 15 U.S.C. § 1643.

¹⁸ 15 U.S.C. § 1666i.

¹⁹ http://www.helpwithmybank.gov/faqs/credit_unauthorized_charge.html. The web page advises: "For any charges that you believe are in error, notify your bank in writing. Use the billing error instructions that appear on the back of the periodic credit card statement. . . . The credit card company must receive your letter within 60 days of its sending you the first statement on which you noticed the billing error."

²⁰ 12 C.F.R. § 226.12(b)(3) (notification can be by writing or telephone). More specifically, the Official Staff Commentary to that section states: "The liability protections afforded to cardholders in section 226.12 [unauthorized use protections] do not depend upon the cardholder's following the error resolution procedures in section 226.13 [billing error procedures]. For example, the written notification and time limit requirements of section 226.13 do not affect the section 226.12 protections." Official Staff Commentary § 226.12(b)(3)-3.

²¹ See generally Report of the Ombudsman, OCC, Nov. 2007 (recounting compensation resulting from successful complaint resolution and other success stories), available at <http://www.occ.gov/Ombudsman/2006OmbudsmanReport.pdf>

²² See GAO, *supra* note 12, at 13 – 15.

²³ See *id.* at 17.

²⁴ *See id.* at 15, fig. 2. OCC pursued only 20% of complaints. Only 7% of complaints resulted in a finding that the bank erred. With the exception of OTS, where 21% of complaints resulted in a finding of error by the thrift, other agencies produced comparable results.

²⁵ In answer to the question of whether OCC will be able to resolve consumer complaints, the OCC responds: "Not always. Sometimes a complaint relates to a factual or contractual dispute that only a court of law can resolve. Many complaints involve issues covered by the bank's internal policies. Such bank policies might not be governed by federal laws or regulations." Assistance for Customers of National Banks, *supra* note 11.

NCUA advises:

"[M]any complaints stem from factual or contractual disputes between the federal credit union and the member. If you and the credit union are unable to reach a mutually agreeable settlement in such a situation, only a court of law can impose a remedy and award damages. We recommend you consult an attorney for guidance if you want to consider pursuing a legal remedy." Federal Credit Union Complaints, *supra* note 11.

²⁶ GAO, *supra* note 12 at 16.

²⁷ *See* OCC Ombudsman Report, *supra* note 21 at 18 (noting that OCC launched its first customer survey in 2006)

²⁸ *See* Dugan, *supra* note 8, at 3 – 4.

²⁹ *See* Plunkett statement, *supra* note 14 , at 11.

³⁰ OCC Ombudsman Report, *supra* note 21, at 23 – 25.