

**STATEMENT OF RICHARD HUNT
PRESIDENT
CONSUMER BANKERS ASSOCIATION**

**SUBMITTED TO THE SENATE COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS**

**“PROTECTING CONSUMERS FROM ABUSIVE OVERDRAFT FEES: THE
FAIRNESS AND ACCOUNTABILITY IN RECEIVING OVERDRAFT
COVERAGE ACT”**

November 17, 2009

The Consumer Bankers Association (“CBA”) appreciates the opportunity to offer this statement for the record in connection with today’s hearing on S. 1799, the FAIR Overdraft Coverage Act. For 90 years, CBA has been the recognized voice on retail banking issues in the nation’s capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation’s regional and super community banks as well as the largest bank holding companies that collectively hold two-thirds of the industry’s total assets.

In light of the recent amendments to Regulation E issued by the Board of Governors of the Federal Reserve on November 12 (“Overdraft Rule”), CBA does not believe that additional legislation is necessary to address issues relating to bank overdraft practices. The Overdraft Rule is the result of a year and a half of review and over 20,000 comments from the public. It is the law of the land, and CBA’s members are already working diligently to comply with the new requirements. The Overdraft Rule provides consumers with strong protections regarding debit card and ATM transactions, similar to several of those provided in the FAIR Overdraft Coverage Act. Despite these protections, CBA is concerned the Overdraft Rule will result in large numbers of dissatisfied bank customers who are unable to pay for goods or services at the point of sale, either because the consumer failed to opt in to overdraft coverage, or because banks no longer provide overdraft coverage in connection with debit card transactions as a result of the Overdraft Rule. We believe it would be prudent for Congress to evaluate the impact of the Overdraft Rule on consumers before considering additional legislation. Consumers and banks need certainty and stability with respect to financial services product offerings. The Overdraft Rule provides finality to the drawn out process of addressing overdraft practices. Additional congressional activity will only increase confusion and instability, harming consumers in the end.

At the outset, I believe it is important to give some context for CBA’s statement. I want to provide you with insight about overdraft services that Americans are not getting from the media or from industry critics. Courtesy overdraft services are just that—a courtesy the banks

have traditionally offered as a service to their customers. Our members report and the statistics show the vast majority of consumers manage their checking accounts in a responsible manner. But even the most conscientious consumer can overdraw an account once in a while. When this happens, the bank has one of two choices: it can deny the transaction, or it can honor the transaction. If the bank bounces a check, the consumer will owe a fee to the bank and probably an additional fee to the payee. If the check was to pay a bill, the consumer may also incur a late fee and could be reported delinquent to a credit bureau. The consumer could also be reported to a “bad check” database, making it more difficult for the consumer to have his or her checks accepted for payment from other merchants in the future. And, by writing a check that is dishonored, the consumer could be breaking the law. It seems pretty clear why the consumer would rather have the check paid instead of bounced. If the bank denies the debit transaction, the consumer may be faced with a plate full of food or a cart full of groceries and no way to pay for them. This result benefits nobody, especially the consumer.

When discussing issues relating to overdrafts, we sometimes forget that banks provide consumers with a variety of means to manage their personal finances and avoid overdrafts. With today’s product features and offerings, there is simply no reason that a consumer with a checking account cannot keep track of, or learn, an account balance in a matter of seconds. While many of us still rely on check registers to keep our checking account in order, banks provide consumers with an array of other tools to ensure that consumers handle their checking accounts in a safe and responsible manner. Whether it is checking a balance by phone or at an ATM, managing a checking account online, or signing up for e-mail alerts, consumers are empowered more than ever to maximize their relationship experience with their bank.

In the unlikely event that a consumer overdraws an account, it is not hard to understand why the consumer generally prefers the overdraft transaction be honored, even if it results in an overdraft fee. Because this is a service, and not a loan product, the customer has no guarantee the item will be paid and cannot rely upon it for short-term credit. Rather, it is a courtesy for the benefit of the consumer. It is an important courtesy that is provided by thousands of banks to millions of customers. So, despite the frequent criticism of overdraft services, there can be no question consumers and retail merchants would suffer unnecessary and unwanted harms if banks did not provide these courtesy services.

It is also important to note that, despite the claims of some, only a small percentage of consumers benefit from overdraft services more than just once in a while. Furthermore, at least one study indicates that, of those consumers who do benefit from overdraft services more than once in a while, only about 15% are low to moderate income. In other words, overdraft services are generally not repeatedly used by low or moderate income consumers as a short-term loan, or a “payday” loan. Rather, of the small percentage of consumers who receive overdraft coverage more than occasionally, the majority appear to be consumers of some means who simply are not managing their accounts.

Honoring an overdraft has costs for a bank, however. The cost of processing the overdraft is only one of several costs that a bank must recover when it pays an overdraft for a consumer. There are risks associated with extending the overdraft to the consumer, such as whether the overdraft will ultimately be repaid. It is the bank—not the merchant or even the customer—that

bears this risk. It is not only reasonable, but *it is expected* that a bank is compensated for taking such risks. It is also important to note that overdraft fees are an important deterrent to future overdrafts on the account.

Before considering the provisions of S. 1799, it is also critical for the Committee to understand the sweeping scope of the Overdraft Rule. Under the Overdraft Rule, consumers will generally not incur an overdraft fee in connection with a debit or ATM transaction *unless the consumer has affirmatively indicated a desire for the service*. In other words, the consumer will receive a disclosure describing overdraft services, and the consumer will make the decision whether overdraft coverage is appropriate. We suspect the vast majority of consumers will not opt in, at least initially, due to general inertia and lack of recognition of the value of overdraft services. As more and more consumers get stranded at a restaurant without a means to pay for the already eaten meal, consumer opt-in rates will begin to increase. Regardless, consumers who do not want to incur overdraft fees generally will not incur overdraft fees.

Not only does the Overdraft Rule have the effect of significantly limiting the assessment of overdraft fees, but banks must offer the same terms, conditions, or other features on accounts (other than overdraft features) regardless of whether the consumer opts in. Furthermore, a bank may not condition payment of any overdrafts (*e.g.*, by check) on the consumer's opt in for debit and ATM transactions, nor may a bank decline to pay a check overdraft solely because the consumer did not opt in to overdrafts for debit and ATM transactions.

These strong protections are similar to several provisions in S. 1799. We believe these protections are more than necessary to address overdraft issues associated with debit card and ATM transactions, and we urge the Committee to evaluate the effect of their implementation before taking further action.

Turning to S. 1799, CBA generally supports several of the concepts included in the bill. For example, we believe consumers should receive information describing overdraft services at account opening, and information about overdraft fees incurred in monthly statements. Of course, banks generally do this already and it has been further addressed by the Federal Reserve in the Overdraft Rule. CBA also believes consumers may find information about alternative products, such as overdraft lines of credit, beneficial. Many banks make this information available already, too, and it is also a component of the Overdraft Rule. CBA also understands the need to provide consumers choice regarding overdraft services, an approach shared by the Overdraft Rule. Finally, we also support the provision in S. 1799 that prohibits banks from engaging in unfair or deceptive acts or practices pertaining to overdraft services. CBA supports this concept, already embedded in current law prohibiting banks from engaging in unfair or deceptive acts or practices.

We are concerned, however, this legislation would significantly increase bounced checks, debit transaction denials, and the number of dissatisfied bank customers. One of our biggest concerns is with the prohibition on the number of overdrafts permitted each month and year. S. 1799 would limit a bank to charging only one overdraft fee a month and six overdraft fees a year. Although it may seem reasonable to expect a consumer would not overdraft an account more than once a month, or six times a year, I can tell you this is not always the case, even for the

most responsible customers. For example, a consumer could write several checks not realizing that his or her spouse recently made an ATM withdrawal, or wrote other checks. This could result in several checks bouncing. If a bank is permitted to charge only one overdraft fee when those checks bounce, the bank simply may not honor all of those checks. Indeed, it may not even be a safe or sound banking practice to honor the checks without charging a fee. We believe the consumer would rather have those checks paid, even if it results in multiple overdraft fees, than have to clean up the aftermath of several bounced checks. Furthermore, if the consumer has *already indicated that he or she would like overdraft debit transactions covered* under the Overdraft Rule, it makes little sense to essentially force the bank to deny overdraft debit transactions beyond the first one each month or sixth in a year. If the consumer has requested overdraft coverage, and uses his or her debit card (presumably with some idea of an account balance), we see no reason why the bank should not be permitted to honor more than one overdraft debit transaction a month (or six a year) even if the bank charges a fee for each overdraft.

CBA is also concerned that S. 1799 would cause banks to limit overdraft coverage even for those consumers who want it. For example, the legislation would limit the cost of an overdraft fee to an amount that is reasonable and proportional to the cost of processing the transaction. As I describe above, there are other costs that are very real to the bank other than simply “processing” the transaction. If a bank cannot recover these costs, it may not be in a position to offer the services. It may also be an unsafe or unsound banking practice to charge only a minimal “processing” fee for allowing a consumer to overdraft an account. Furthermore, a combination of consumer inertia and the opt-in requirement will undoubtedly result in consumers not realizing the consequences of foregoing overdraft services until it is too late and transactions are denied.

We ask the Committee to consider not only the impact on consumers if their transactions are not honored as a result of S. 1799, but also the impact on all checking account customers. If Congress restricts the ability of banks to charge overdraft fees, not only will those services be less available to consumers who want them, but it will also force banks to recover revenue in other ways. For example, bank revenues have increasingly depended on behavior-based fee income as a result of the shift away from account maintenance fees. We believe consumers benefit greatly from the variety of free checking account options that banks offer. These options are especially beneficial to those of low or moderate incomes who may not choose to use a bank if there are additional fees. But checking accounts are not free to offer, and banks must recover some costs, including through overdraft fees. Some of that fee income includes fees from overdrafts. If H.R. 1799 is enacted, it is possible (perhaps even likely) that many banks may need to reevaluate their ability to offer free checking accounts to those consumers who manage their accounts well. (Unfortunately, this may also be the natural outcome of the Overdraft Rule.) We are certain the majority of consumers would prefer to keep their free checking accounts instead of returning to the days of account maintenance fees or transaction fees, even if it means that banks charge overdraft fees.

There are also broader implications beyond just banks and their customers. The legislation will have a significant impact on retailers and the marketplace. Merchants will likely see a significant increase in bounced checks (or an increase in the price they pay for services to

protect themselves from bounced checks). With respect to debit card transactions, merchants will see an increase in denied transactions after the groceries have been bagged, or food has been plated or eaten. When this happens, it is not simply a question of asking the consumer to pay with something other than a debit card. Approximately 25% of households do not have a credit card, and this number may be increasing. Asking the consumer to have sufficient cash on hand or to write a bad check at the point of sale, when a debit card is denied do not seem like appropriate alternatives either. Yes, there are anecdotes of the \$39 cup of coffee resulting from an overdraft debit card transaction (\$4 coffee and \$35 overdraft fee). Congress should not legislate based on anecdotes of consumers who did not keep track of their account balance, however, especially when the legislation will harm a far greater number of consumers than it helps.

Mr. Chairman, CBA is pleased to have the opportunity to share some of our thoughts with the Committee about S. 1799. We look forward to working with you and the other Members of the Committee to refine and improve this legislation to provide consumers with appropriate protections without creating significant unintended consequences.