

CFE

Cities for Financial Empowerment

Co-chairs

December 2, 2009

New York City

San Francisco

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
United States House of Representatives

Member Cities

Re: The Overdraft Protection Act of 2009 (H.R. 3904)

Chicago

Dear Representatives Frank and Bachus:

Los Angeles

We write on behalf of the Cities for Financial Empowerment (CFE), a national coalition of geographically and demographically diverse cities pioneering innovative financial empowerment initiatives to improve the financial health and security of residents with low and moderate incomes.

Miami

Newark

The CFE Coalition supports the Overdraft Protection Act of 2009, H.R. 3904 (the Overdraft Act), and urges Congress to strengthen it even further to advance its important consumer protections.

Providence

San Antonio

Savannah

Seattle

The Federal Reserve Board's final rules regarding overdraft protection plans, released on November 12, incorporated many of the suggestions the Coalition made to the Federal Reserve in its public comments earlier this year, and the CFE Coalition generally supports the final rules.

The CFE Coalition continues to strongly support passage of the Overdraft Act even in the face of the Federal Reserve's new rules. This legislation remains critical to our cities' efforts to connect residents to mainstream banking and affordable financial services. Too often, our work on behalf of consumers is undermined by unanticipated and high-cost overdraft fees. While the Federal Reserve's rules will provide considerable improvements in consumer protection, the Overdraft Act will further improve the financial services marketplace and codify critical elements of the new rules. The CFE Coalition highlights several key elements of this legislation and a few ways for further improvement of the Overdraft Act:

- **Broad Definition of "Overdraft Coverage Fee":** The Overdraft Act will extend overdraft coverage protections to fees applied to the use of overdraft lines of credit, which have been increasing in recent years. *The legislation should go even further: we recommend extending that definition to apply to fees charged to transfer funds from linked savings or credit card accounts, to prevent financial institutions from simply shifting deceptive fee practices to another product offering.*
- **Meaningful Limits on Fees:** Unlike the Federal Reserve's new rules, the Overdraft Act would limit overdraft fees to one per month and six per calendar year. This would ensure consumers who participate in overdraft programs are able to avoid the harmful "domino effect" of multiple fees. Research from the Center for Responsible Lending shows that the burden of these fees is concentrated on the least financially stable, with 16% of overdraft loan users paying 71% of the fees. Limiting the number of fees would put an end to the disproportionate burden on consumers with low incomes and encourage financial institutions to create innovative communications solutions to meet the banking needs of their consumers. *The legislation could go even further: we recommend that limits on the amount of NSF fees be established so that they are reasonably related to the cost to the financial institution of the returned check or denied electronic funds transaction.*

- **Affirmative Consent:** The legislation will codify the new requirements that consumers give their consent, or “opt in,” to fee-based overdraft protection plans. The requirement that all consumers opt in would restore the core component of any fair consumer transaction – meaningful choice.
- **Customer Discrimination Prevention:** This legislation prevents discrimination against customers who do not opt in to overdraft protection services. This is an important part of the solution. *The legislation should go even further: it should specifically prevent financial institutions from conditioning overdraft coverage for checks and electronic fund transfers on the acceptance of overdraft coverage for ATM and POS/debit purchases. This would ensure that consumers have meaningful choice and are not unduly pressured to opt in for card-based coverage.*
- **Real-Time Choice:** CFE cities strongly support the bill’s requirement that consumers are notified and given the chance to cancel proposed ATM transactions that will result in overdraft fees at the time of the transaction. *This legislation should be strengthened even further to extend this rule to pin-based debit-card purchases, such as at a drug store or supermarket. Claims about technological constraints certainly are exaggerated in this age of digital development.*

Time is of the essence in enacting these safeguards. As federal, state, and city governments devote substantial resources to help consumers weather the economic downturn and work to make the most of their resources, enacting these strong new protections will be of significant help. Fairness and transparency must become the watchwords of a stable financial services marketplace.

We urge you to report out of committee strong, comprehensive overdraft protection legislation and enact the amendments outlined above.

Respectfully,



Jonathan Mintz
Commissioner
NYC Department of Consumer Affairs
Co-Chair, CFE Coalition



José Cisneros
Treasurer
City and County of San Francisco
Co-Chair, CFE Coalition

cc: Members, House Committee on Financial Services