



Testimony of

**Richard Hunt**

On Behalf of the

Consumer Bankers Association

Before the

Committee on Financial Services

United States House of Representatives

**October 30, 2009**

**Testimony of**  
**Richard Hunt**  
**President, Consumer Bankers Association**  
**On H.R. 3904, the Overdraft Protection Act of 2009**  
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Good morning Mr. Chairman and Members of the Committee, my name is Richard Hunt and I am the President of the Consumer Bankers Association (“CBA”). 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. I appreciate the opportunity to appear before you this morning to discuss H.R. 3904, the Overdraft Protection Act of 2009.

CBA supports the efforts of the Board of Governors of the Federal Reserve to provide appropriate consumer protections pertaining to bank overdraft practices. Although we do not necessarily agree with several of the items proposed in the Federal Reserve’s overdraft regulation, we believe the Federal Reserve’s efforts will likely strike

the appropriate balance regarding the regulation of overdraft services without unnecessarily limiting consumers' access to these services. It is our understanding the Federal Reserve will issue its overdraft regulation in the near future, and certainly within the next two months.

It is important to note the Federal Reserve's efforts are the culmination of consumer testing, a review industry and consumer feedback, consideration of unintended consequences, and an evaluation of appropriate consumer protections. CBA has no expectation the banking industry will necessarily be pleased with the requirements in the Federal Reserve's regulation, but we do expect it will address many of the concerns addressed in H.R. 3904. It is obviously the job of Congress to make public policy, but we urge Congress, at this point in the rulemaking, to wait only a short period of time to review the fruit of the Federal Reserve's efforts before considering whether further legislation is necessary.

Before providing our thoughts on the legislation, I believe it is important to give some context for CBA's testimony. 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 that the banks have traditionally offered as a service to their customers. Our members report and the statistics show that 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 bounce the check, or it can honor

the check. If the bank bounces the check, the consumer will pay a fee to the bank; the consumer will likely pay a fee to the person to whom the check was written; the consumer may also face late payment fees and delinquencies if the check was written to pay a bill; and the consumer may also be at risk of violating state laws pertaining to bad checks. If the bank denies a debit card 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. With this in mind, it is not hard to understand why consumers generally prefer that their overdraft transactions be honored, even if they result in overdraft fees. 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 that 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.

With respect to H.R. 3904, CBA is still gathering feedback from its members to develop a position on the overall bill. CBA generally supports several of the concepts addressed in H.R. 3904. For example, we believe consumers should receive information describing overdraft services at account opening, and information about overdraft fees incurred in monthly statements. CBA also believes consumers may find information about alternative products, such as overdraft lines of credit, beneficial. CBA understands why some consumers may want the option of opting out of all overdraft services, and we would support legislation ensuring that such choice is provided. We also support the provision in H.R. 3904 that prohibits banks from engaging in unfair or deceptive acts or practices pertaining to overdraft services. In effect, we support giving consumers the necessary information to understand overdraft services, understand possible alternatives, and to ensure that banks treat their customers fairly.

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. H.R. 3904 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 that a consumer would not overdraft an account more than once a month, or six times a year, I can tell you that 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.

CBA is also concerned that H.R. 3904 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 H.R. 3904, 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. 3904 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. 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 also do not seem like appropriate alternatives. Yes, there are anecdotes of the \$39 cup of coffee resulting from an overdraft debit card transaction (\$4 coffee and \$35 overdraft fee). But Congress should not legislate based on anecdotes of consumers who did not keep track of their account balance, 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 H.R. 3904. 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. I would be happy to answer any questions you may have.