Overdraft Protection Act of 2009

Support strong overdraft reform proposal in the U.S. House, H.R. 3904

CRL Policy Brief October 2009

Banks and credit unions skim cash from accounts through unfair overdraft practices

Rather than discouraging customers from overdrawing their accounts, the system most banks and credit unions now use creates additional overdrafts and maximizes the number of fees they can charge. CRL finds that bank fees for overdrafts increased 35 percent in just two years, rising to nearly $24 billion per year in 2008.

Customers are now typically automatically enrolled in overdraft systems that approve debit card transactions with no warning in the event of insufficient funds, so they frequently pay a $34 fee for the bank to cover even a small purchase: The average debit card shortfall is only $17. Banks and credit unions manipulate the order in which transactions are deducted from accounts, subtracting the highest dollar amount first, which increases the number of overdraft fees they can charge.

The funds extended by the banks to cover shortfalls are recouped very quickly, usually in a matter of days when customers makes their next deposit. This makes overdraft a very expensive form of credit that customers typically didn't ask for and often don't want.

U.S. House and Senate proposals promise significant reform

Regulators have failed to stop our nation's financial institutions from moving from a policy of discouraging overdrafts to that of encouraging and maximizing overdrafts to drive up fees. The Overdraft Protection Act of 2009, H.R. 3409, introduced by Congresswoman Carolyn Maloney in October 2009, would make meaningful reform with measures similar to the FAIR Overdraft Coverage Act proposed in the U.S. Senate. H.R. 3409 would:

- require financial institutions to obtain explicit permission from all their customers before enrolling them in a system of fee-based overdraft coverage for any checking account transactions;
- require that an overdraft fee charged on any transaction be reasonable and that its size bear some relationship to the cost of covering the overdraft;
- prohibit reordering of customer transactions to trigger otherwise avoidable overdraft fees;
- and limit the number of overdraft fees per person to six a year and no more than one a month. At that point, financial institutions would have to enroll the consumer in a lower-cost program or stop charging for covering overdrafts.

The Center for Responsible Lending strongly supports the Overdraft Protectin Act of 2009 as it would represent a major advance in overdraft reform.

Additional effects of the proposed Overdraft Protection Act of 2009, H.R. 3904:

- In addition to the major measures described above, the Act would prohibit NSF or insufficient funds fees on debit card and ATM transactions. NSF fees differ from overdraft fees in that they are levied when payment is not made, rather than when the transaction is honored. They are not appropriate for debit card transactions.

- Some banks and credit unions charge customers a daily or sustained fee for having a negative balance over time. The Overdraft Protection Act would make these sustained fees subject to the annual and monthly limits on number of overdraft fees charged.

- For some debit card transactions, like purchases of gas or reserving of rental cars, some financial institutions put a hold on the funds in their customers' accounts that exceeds the amount of the transaction. The Overdraft Protection Act would prohibit charging fees for overdrafts caused solely by these holds.

- The Act would require institutions to provide a warning before charging an overdraft fee for an ATM or teller withdrawal. It would also require a Government Accountability Office study on the feasibility of financial institutions giving a warning before approving debit point-of-sale transactions. It would give the Federal Reserve the authority to require such a warning if the benefit outweighed the cost.

- The average fee for overdrafts has risen rapidly in recent years and is now $34. The Act would put a one-year moratorium on increases in overdraft and NSF fees—the period of time between enactment of the Act and when it would become effective.

- Federal credit unions have an 18 percent usury cap on annual interest. Banks have no such cap. The Overdraft Protection Act would exempt federal credit unions from counting overdraft fees for purposes of the 18 percent usury cap. This provision has the effect of treating banks and federal credit unions the same, since all other limits on overdrafts apply to federal credit unions. However, CRL believes the 18 percent usury cap for federal credit unions should remain applicable to all types of credit, including overdraft loans.

The Overdraft Protection Act, for a healthy economy

Not only do individual Americans need basic protections in place that keep banks and credit unions from unfairly appropriating their funds, but our nation as a whole needs these reforms. The billions of dollars going to unproductive overdraft fees would be much more helpful in rebuilding our economy if they were going toward constructive use: paying down debt, purchasing basic needs and services, and investing in our families' futures. CRL strongly supports swift passage of H.R. 3904, the Overdraft Protection Act.