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NEW YORKERS FOR RESPONSIBLE LENDING

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By Email and USPS

November 21, 2005

New York State Banking Board
c/o Sam L. Abram, Secretary of the Banking Board
New York State Banking Department
1 State Street
New York, NY 10004

Dear New York State Banking Board:

We the undersigned members of New Yorkers for Responsible Lending, strongly oppose the Banking Department's proposed amendment of Part 32 and proposed new section 6.8 of the General Regulations of the Banking Board (Overdraft Protection Charges).

NYRL is a state-wide coalition that promotes access to fair and affordable financial services and preservation of assets for all New Yorkers and their communities. NYRL's 116 members are committed to fighting predatory practices in the financial services industry through policy reform, education and outreach, research, and direct service. NYRL members represent community financial institutions, community-based organizations, affordable housing and first-time homebuyer groups, advocates for seniors, legal services organizations, and community reinvestment, fair lending, and consumer advocacy groups.

Overdraft protection, or "bounce protection," programs are not a form of protection at all—rather, they are designed and marketed to hook financially struggling consumers into another form of high-cost, abusive credit. If implemented, the Banking Department's proposed changes would strip away valuable existing consumer protections, and enable state-chartered financial institutions to impose substantially higher charges in their overdraft bounce protection programs. These changes would be particularly detrimental to the state's low- and moderate-income consumers.

Overdraft bounce protection uses deceptive methods to charge customers usurious fees

A distinguishing feature of overdraft bounce protection is that customers are signed up without material knowledge or informed consent. Consequently, customers are unwittingly lured into using a product

they may not want while incurring fees they may not be able to afford. Numerous consumer advocacy organizations have documented the aggressive charging of fees that is also a central feature of bounce protection programs. In addition to high initial charges, banks often impose daily or periodic fees until the account can be brought current.

There is no correlation between the amount of the check that was bounced, or the amount the account remains in arrears, and fees charged.¹ The result is a quick and dramatic escalation in the cost of an overdraft of any dollar amount, especially for individuals living on fixed incomes who receive checks only once a month, often amounting to three or four digit APRs. Because bounce protection coverage is triggered not just by a bounced check, but also by ATM, debit card, and other types of overdrafts, it is much easier for consumers to overdraw their accounts, leading to a fee bonanza for the industry.

Overdraft bounce protection programs are thinly disguised high-cost loans that can have a devastating effect on lower income account holders

By extending short-term credit at high costs, overdraft bounce protection allows banks to offer a variation on usurious payday lending. Like payday lending, overdraft bounce protection programs profit by wringing excessive fees from the most vulnerable consumers, with as little disclosure as possible. Overdraft bounce protection is specifically targeted at low-and moderate- income account holders. In a California lawsuit, for example, a Bank of America official reportedly revealed that approximately eighty percent of its overdraft bounce protection customers were low-income.

One need look no further than the business plan promoted by the consultants who design and sell bounce protection plans to thousands of banks, to see that these plans have nothing to do with protection, and everything to do with gouging vulnerable consumers. These consultants strongly emphasize huge increases in fee income as the big benefit of bounce protection plans. The key to the enormous fee income is an escalation in the number of overdrawn accounts. The successful implementation of bounce protection thus demands that overdrafts are no longer discouraged. Instead, banks are actually deliberately encouraging financially struggling consumers to overdraw their accounts to generate more and more income from interest and fees.

As an example, one of the larger consultants recommends increasing overdraft income by encouraging overdrafters to overdraw more frequently and by attracting chronic overdrafters. It even recommends sending a “thank you” letter rather than a dunning letter to customers who overdraw on their accounts. Bounce protection programs encourage overdrawing even where consumers are repeatedly overdrawing, or getting into financial trouble.²

¹ For example, Citizens Bank charges \$33.00 per bounced item, plus \$33.00 every four days until the account is brought current. PNC Bank will charge between \$31.00 and \$35.00 per bounced check or overdraft, and then \$5.00 per day for 5 days if the account is not brought current within 4 days. Provident Bank similarly charges a \$32.00 per item fee, and then \$5.00 daily fee up to 10 days, if the account remains delinquent for 7 days. Chase Manhattan Bank charges a one-time fee of \$30.00 and Bank of America’s fee is between \$19 and \$34.00.

² Bounce Protection: How Banks Turn Rubber Into Gold by Enticing Consumer to Write Bad Checks, An Examination of Bounce Protection Plans, Consumer Federation of America and the National Consumer Law Center (June 2005) <http://www.consumerfed.org/pdfs/bounceappendix012803.pdf>.

The following case examples from New York State demonstrate how this aggressive marketing of bounce protection programs can trap consumers who live paycheck to paycheck in a cycle of debt:

- Mr. A is a deaf Brooklyn man whose only source of income is the \$666 that he receives in Supplemental Security Income (SSI) each month. Until his bank account was closed earlier this month, his SSI benefits were directly deposited in his bank account at the beginning of each month. For the last several months, Mr. A was charged more than \$200 a month in fees for overdrafts, based on ATM withdrawals of \$20 or \$30. The overdraft bounce protection feature caught in a debt trap from which he could not escape—each month when his SSI check was deposited, much of it was applied toward overdraft bounce protection fees; as a result, by the middle of the month, he had to rely on overdrafts to cover his living expenses, incurring additional fees which were then paid off by his subsequent SSI check.
- A senior citizen in Albany incurred more than \$165.00 in fees after bouncing three checks totaling a little over \$100.00. The woman had gone into the hospital for an operation and had pre-written checks for her bills to be sent while she was gone. Her grandson mistakenly mailed the envelopes a week early and three checks bounced, causing a \$33.00 fee for each check. She had to wait for her Social Security check to be deposited to bring the account current, causing her to incur \$66.00 more in fees. The bank refused to forgive any of the fees.
- A 58-year-old disabled veteran in upstate New York was charged \$132.00 in fees for having his account overdrawn by \$8.72 for 10 days. The man mistakenly wrote a check for \$12.50, though he only had \$3.78 in his account at the time. The bank charged an initial \$39.00 fee and then \$33.00 every three days until the account was brought current. By the time his next SSI check was deposited, the bank had charged \$132.00 in fees.
- A woman upstate became indebted to a bank for months because of overdraft bounce protection fees. The bank erred by crediting her account twice for the same deposit. By the time the bank realized its error and automatically reversed the transaction, the woman had spent some of the money not realizing what had happened. It took months for her to cure the arrears because of fees that accrued on the account every four days.

Bounce protection violates the State Banking Department’s own “Maximum” and “Reasonable” Charges Guidelines

This year it is estimated that banks will earn more than \$30 billion in ATM, bounced check, and overdraft bounce protection fees. By honoring overdrafts, targeting low-income customers who are often struggling to make ends meet, and by foregoing credit checks, many banks design overdraft bounce protection programs to entice customers to routinely exceed their checking balance. Research by the Consumer Federation of America and the National Consumer Law Center reveals that in 1998 it cost a bank approximately \$.50 to \$1.50 to process a bounced check.³ Whatever the cost is today, it is safe to say there is no plausible relationship between the cost of the transaction and the cost that is passed on to the consumer, which usually ranges from \$28 - \$32 per overdraft plus additional daily charges until the account is brought current. Considering that the most effective way to discourage

³ *Id.*

overdraft behavior is simply to not honor overdrafts, it is also easy to dismiss the banking industry's claim that the fee is designed to deter "misuse by customers of banking services."

The Banking Department's proposed action sets a dangerous precedent and undermines the value of a State Charter

On January 28, 2004, Superintendent Diana Taylor testified before Congress:

For an unelected regulator to use the rather technical rulemaking process, sweeping away the work of thousands of state legislators to protect millions of consumers, is absolutely wrong... If you lose the states as a laboratory for consumer protections and other innovations you lose a great attribute of our federalist system...

Sadly, the Banking Board is proposing to do what the Banking Department condemned the Office of the Comptroller of the Currency (OCC) for doing 22 months ago, going outside the legislative process to carelessly invoke the "Wild Card" provision in its overdraft bounce protection proposal. With this attempt to keep state banks from switching to a national charter, the State Banking Department continues the systematic erosion of the very regulatory framework that has made New York State a model of consumer protections across the country.

At a time when the federal government has completely dropped the ball on consumer protection, it is absolutely vital that states take the lead in protecting consumers against abusive practices in the financial services industry. By stripping away existing protections and enabling state-chartered banks to offer an abusive product that adversely affects working poor families, the Banking Department is engaging in a race to the bottom, rather than taking a strong and principled stand on an issue that is vital to New Yorkers.

We restate our wholesale objection to the introduction of overdraft bounce protection. However, if the Banking Board is intent on permitting overdraft bounce protection, we respectfully urge the State Banking Department to include the following provisions:

- A prohibition against applying overdraft bounce protection to ATM withdrawals;
- A prohibition against making overdraft bounce protection a feature of Basic Banking accounts;
- An explicit and comprehensive exemption of public benefits and other protected income from recovery of overdraft bounce protection charges;⁴ and
- A requirement that account holders be afforded a seven-day grace period to bring the account current before the bank may charge daily fees.

These modest restrictions on overdraft bounce protection could help mitigate the financial pain and burden that would be imposed on New York State banking customers if state-chartered banks are permitted to offer this product.

Sincerely,

Albany County Rural Housing Alliance, Inc.
Anti-Discrimination Center of New York
BWICA Educational Fund, Inc.
Central New York Citizens in Action

⁴ Federal law prohibits the collection of debts from accounts holding Social Security, SSI, Veterans', Black Lung, and Railroad Retirement Benefits. Banks, likewise, should be explicitly prohibited from automatically deducting fees from accounts holding exempt income.

Community Action in Self-Help, Inc. (C.A.S.H., Inc.)
Demos: A Network for Ideas and Action
Empire Justice Center
Fair Housing Council of Central New York
Foreclosure Prevention Project, South Brooklyn Legal Services
Greater Rochester Community Reinvestment Coalition
Hispanic Senior Action Council
Institute for Puerto Rican and Hispanic Elderly
Long Island Housing Services
Lower East Side Peoples Federal Credit Union
Margert Community Corporation
Neighborhood Economic Development Advocacy Project
New York City Financial Network Action Consortium
(NYCfNAC)
New York Public Interest Research Group (NYPIRG)
NY CDFI Coalition
Pratt Area Community Council
Western New York Law Center