

STATEMENT OF
DENNIS DOLLAR
FORMER CEO
GULFPORT VA FEDERAL CREDIT UNION
GULFPORT, MISSISSIPPI
AND
FORMER CHAIRMAN
NATIONAL CREDIT UNION ADMINISTRATION
ALEXANDRIA, VIRGINIA
AND
CURRENTLY,
PRINCIPAL PARTNER
DOLLAR ASSOCIATES, LLC
BIRMINGHAM, ALABAMA

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
HEARING ON
HR 3904
“THE OVERDRAFT PROTECTION ACT OF 2009”

FRIDAY, OCTOBER 30, 2009

Good morning. My name is Dennis Dollar. I served as a member of the National Credit Union Administration Board from 1997 to 2004 and as the NCUA Chairman from 2001-2004. Prior to that appointment I was President and CEO of the Gulfport VA Federal Credit Union, a relatively small \$32 million credit union with approximately 12,000 members in Gulfport, Mississippi. Since leaving NCUA, I have formed a consultancy that works with credit unions and other financial service entities in their strategic initiatives.

I guess you could say that, from my experience, I have had the opportunity to view the overdraft protection issue, as Judy Collins famously sang in the 1960s, from “both sides now.” Today, I have been asked by Ranking Member Bachus to come before you representing no particular group or organization, only as a former credit union CEO and a former credit union regulator who now sees overdraft protection programs in action on a daily basis and whose experience indicates that, while there are always ways in which such programs can be structured better for both the consumers and the financial institutions they do business with, it would not be good public policy to effectively eliminate them from the marketplace as HR 3904 would effectively do.

During my years in credit union management there was no overdraft protection program offering. If a member wrote a bad check, we charged a NSF fee and returned the item. For concern about being discriminatory about which ones we honored and the ones we didn't, we seldom honored the item. Our hope was that the NSF fee would have a deterrent effect on the member writing bad checks and, if abuse continued that caused significant loss to the credit union, we often referred the matter to local prosecutors to initiate criminal proceedings.

Needless to say, the members, who like all consumers are always opposed to any user fee imposed upon them, did not like this fee assessment process at all. They not only faced our NSF fee, but they were often charged an additional returned check fee by the merchant to whom they wrote the item. Often they also faced late charges if the returned item was for their rent or insurance. I even dealt with some irate members who said we cost them their insurance renewal or their apartment lease because we wouldn't honor

a check on Friday when they had a payroll ready to post to their account at our credit union on Tuesday.

In most instances, those members were rightfully upset. NSF fees can be very punitive and, frankly, ours did very little to deter the need some members felt to write a check for rent, groceries or insurance when the payment was due – even when they knew a deposit to cover the check was still a few days away. They hoped that either we would waive the NSF fee for them or that they would be able to cover it from their next deposit, but their situation in life left them few options but to use the NSF process to help them try to manage their cash flow. These folks were not slugs or deadbeats. They were good, hard working members who on occasion simply ran out of money before they ran out of month.

It was for these members that the overdraft protection programs we are here today to discuss were developed to assist. Rather than being charged a NSF fee, the member would be charged an identical fee (it is important to recognize that, if structured properly, an overdraft fee is not an additional fee above and beyond the NSF fee) to honor the overdrawn item up to a specific fully disclosed limit and that the item must be settled within 45 days or it would be written off and formal collection efforts begun.

Credit union members, as did bank customers, saw value in these programs because they were able to realize the additional cost savings associated with avoiding merchant fees, late charges and cancellations of service. In addition, these programs (for the same amount of fee they were otherwise being charged when their financial institution bounced their check and assessed a NSF fee) prevented the embarrassment and potential legal liability of writing a check that was returned for insufficient funds. A well structured overdraft protection program could also enable them to maintain their relationship with a traditional financial institution and not be forced to go outside of the financial mainstream for their short term cash flow needs.

As consumers began to utilize these programs, financial institutions began to find themselves with considerable earnings from these programs. These earnings, at least in the overwhelming majority of credit union cases of which I am familiar, did not come from manipulation of the programs to maximize earnings or failure to disclose the terms of the programs so that consumers did not know what they were doing. The earnings came because

the consumer recognized a benefit, or a value, from the program and used it when needed.

When some of the critics claim that consumers do not see any value in these programs and feel ripped off by them, but yet the financial institutions are making a significant amount of fee income each year from the programs – something just does not compute. It is important to note that overdrafting an account is a controllable action. Consumers can always choose to write the check later, make the debit purchase at another time or withdraw from the ATM after their next payroll posts. The fact that financial institutions have increased earnings from these programs should not automatically be viewed as suspect, but rather should be seen as evidence that the consumer sees some value in overdraft programs and is comfortable utilizing them when needed.

Does that mean there is not some abuse? Certainly there is abuse. We've all seen documented examples where there was manipulating of item clearance order solely to maximize profits or assessing \$35 in overdraft fees on a \$5 debit purchase of a venti cup of latte at Starbucks. Those exceptions should be corrected and appropriately regulated.

But overdraft programs can be done right and should be done right. When that happens, consumers and financial institutions benefit.

Overdraft program disclosures must be accurate and in plain English. The right to "opt out" upon request by the consumer should be honored at any time. A written notice of right to "opt out" should be clearly provided to all participants on at least an annual basis. Ongoing cumulative totals of overdraft fees should be clearly disclosed on monthly statements. Smaller overdrafts could be exempted or perhaps a smaller fee assessed on smaller transactions. Daily limits on the number of overdraft fees could be imposed. Check processing order should be disclosed and perhaps options for the processing order given to the consumer. When technology allows it, even an "opt out" at a point of sale would be a best practice worth implementing.

Most of the above listed standards are the way most responsible financial institutions handle their overdraft programs today. Because some institutions do not follow these best practices does not, in my view, make a case to over-regulate those who do with punitive or burdensome legislation that will result in many consumers losing their checking accounts and many

financial institutions being forced to transfer the costs of overdrafts from the consumers who use these programs to the vast majority who do not.

Fewer loans. Shorter hours at the branch. Less interest on a CD. A reduction in new branches. All of these could be among the consumer costs and service casualties of financial institutions losing access to this user based fee program.

But, although my regulatory experience gives me great pause about the potential impact on the long term safety and soundness of some institutions that could come from effectively eliminating this source of earnings, my primary reason for supporting these types of programs is the benefit to the consumer of getting his check or debit honored (up to clearly defined and disclosed limits) for the same fee that would otherwise be imposed upon him as an NSF fee. In my view, the additional merchant fees and late charges that a consumer will face if items that were previously honored are now bounced could conceivably bring a backlash against any legislation or regulation that makes these programs too costly to offer.

If there is no deterrent in the system, bad check writing will grow. A half century of NSF fees, often increasing in amount, proved that the number of overdrafts would not be lowered simply by charging fees. Overdraft programs, with the proper disclosures and a financial education commitment on the part of those offering them, can provide greater consumer value and improve the likelihood of someone getting out of their cycle than would doubling their costs with merchant fees and late charges from NSF check returns.

To limit the number of overdrafts that a financial institution can charge to one monthly or a maximum of six per year as this legislation proposes would be a moral hazard equivalent of someone being only subject to one parking ticket per month. What would then be in place to prevent an individual from parking by the fire hydrant each of the other 30 out of 31 days each month since he has already received his one citation for the month. Property could be in considerable danger if a deterrent is not in place. Others should not have to pay for an individual's irresponsibility.

The same concept applies in the case of overdraft programs.

Credit unions, which are the primary group of financial institutions that I work with, have not been among the abusers of overdraft programs. I strongly urge the focus of any statutory or regulatory action to be on abuse of these programs, not in effectively dismantling them from those who do the right thing in administering their overdraft programs.

My background as a federal regulator who sat on the Federal Financial Institutions Examination Council for four years from 2001 to 2004 leads me to believe that the regulatory agencies are best positioned to police this arena and to eliminate abuse of overdraft programs.

Solid regulatory scrutiny and enforcement action can protect these valuable programs for both consumers and financial institutions. Abuse can be ferreted out and best practices put in place.

The result can be a balanced approach to overdraft protection that does not return us to dark ages of costly NSF fees, merchant fees and late charges but yet does not create a cycle of dependency on such programs. A regulatory balance can keep consumers within the traditional financial institutions but yet ensure that these programs are fully and understandably transparent with reasonable limits in place for both the consumer and the financial institution. Legislation that would largely dismantle these programs through untenable restrictions that would force financial institutions to eliminate their overdraft protection programs is not good public policy.