CUNA
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DANIEL A. MICA
PRESIDENT & CEO

November 17, 2009

The Honorable Christopher Dodd
Chairman
Committee on Banking, Housing and Urban Development
United States Senate
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing and Urban Development
United States Senate
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

On behalf of the Credit Union National Association (CUNA), I am writing to express our opposition to S. 1799, the Fairness and Accountability in Receiving Overdraft Coverage Act of 2009 (FAIR Act). CUNA is the largest credit union advocacy organization in the United States, representing nearly 90 percent of America's 8,000 state and federal credit unions and their 92 million members.

CUNA supports the ability of credit unions to offer overdraft protection plans as a means to help their members resolve short-term financial problems. While the terms of credit union overdraft protection programs may vary, they are structured to help to pay, rather than return, non-sufficient funds transactions in exchange for fees that are similar to those charged for returned items. This spares credit union members the embarrassment of returned checks, as well as additional fees charged by merchants and other payees. Such programs, when used appropriately by consumers, serve as a valuable back-up to overdrawing checking accounts or relying on payday lenders or check-cashing businesses, and are fully consistent with the philosophy and principles of the credit union system.

CUNA recognizes concerns exist about how some overdraft protection programs operate and we note that the Federal Reserve issued a final rule reforming the regulation of these programs on November 12, 2009. In fact, CUNA had recommended a regulatory approach rather than a legislative initiative on this issue as being the most efficient method. While we have concerns that the requirements will present significant compliance issues for some credit unions, the new rule significantly improves consumer protections with respect to these programs, by ensuring that consumers are made aware of the existence of these programs and requiring an opt-in in order to use overdraft protection programs with respect to ATM and one-time debit transactions. We hope the Fed action, as well as the fact that Congress is presently considering the creation of a consumer financial protection agency, will give Congress pause in pursuing the various legislative proposals pending before both chambers.

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We have grave concerns regarding the impact that S. 1799 would have on credit union members who use and value the overdraft protection services their credit union provides. The provisions of S. 1799 that would limit the number of overdraft fees that could be charged per month and per year would simply end overdraft programs to the detriment of many consumers who truly value these programs.

If S. 1799 were law, credit union members would incur more non-sufficient fund (NSF) fees with none of the benefits of having many transactions honored. They would pay more merchant return check fees and have more bad checks reported to consumer reporting agencies. Merchants would deal with more bounced checks and have more bills that are currently paid under automated bill-paying services rejected. Inevitably, other adjustments would be made in checking account services and maintenance fees that would impact a wide range of accountholders. Credit union members lose if S. 1799 becomes law; therefore, we strongly oppose this legislation.

Credit unions are presently adjusting their systems to comply with a myriad of new and complicated statutory and regulatory burdens, including regulations implementing the CARD Act and the Unlawful Internet Gambling Enforcement Act, as well as additional changes to Regulation Z, RESPA, and the new Truth in Savings rules which will go into effect on January 1, not to mention the new Fed overdraft rule. As member-owned financial cooperatives, every dollar that a credit union spends to comply with regulation is a dollar that is not put to use to the benefit of its members. We strongly encourage you to consider the effect that overlapping, duplicative and frequently changing regulatory and statutory mandates have on relatively small financial institution, especially credit unions.

On behalf of America's credit unions, we reiterate our strong opposition to S. 1799, and encourage the Committee to suspend further consideration of this legislation. Thank you very much for your consideration.

Sincerely,

Daniel A. Mica
President & CEO