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**NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS COMMISSIONER
JONATHAN MINTZ CALLS FOR OVERDRAFT PROTECTION REFORM**

***DCA's Office of Financial Empowerment Submits Comments on Overdraft
Regulations to the Board of Governors of the Federal Reserve System
Commissioner Mintz Recommends the Elimination of Automatic Enrollment
into So-called "Courtesy" Overdraft Protection Programs***

The Department of Consumer Affairs (DCA) today announced it formally submitted recommendations to the Board of Governors of the Federal Reserve System on behalf of New York City consumers to demand the elimination of automatic enrollment into overdraft protection programs by implementing real-time, opt-in opportunities to make overdraft choices at point-of-sale transactions.

While the vast majority of consumer transactions occur only when consumers agree to the product or service and its price, current federal regulations allow banks to push costly overdraft protection services – so-called “courtesies” – on unsuspecting consumers without their knowledge or consent. Most consumers never know they are overdrawing their accounts even though banks have the technology to tell them before they do so. Further, more than 50 percent of overdraft fees occur at point-of-sale transactions, such as debit and ATM transactions, which require real-time approval from financial institutions. On average, consumers overdraw their accounts on debit transactions valued at about \$20, yet incur a median \$27 “courtesy” overdraft fee for a transaction they may have declined if they were not locked into automatic overdraft protection.

“Meaningful consumer choice is the single most important component of a fair transaction and a vibrant marketplace,” said Consumer Affairs Commissioner Jonathan Mintz. “So-called ‘courtesy’ overdraft protection is a predatory, hidden fee at best, and an expensive, bad loan at worst. There is no better time than now for banks to be compelled to come clean about these deceptive fees and give consumers the choice to opt in, rather than the burden of having to opt out.”

According to a 2008 Federal Deposit Insurance Corporation (FDIC) study, the estimated typical interest rate on fees resulting from overdraft ATM and debit transactions is between 1,173 percent and 3,540 percent. In 2008, the Center for Responsible Lending reported that the burden of these exorbitant fees is often concentrated on the least financially stable, with 16 percent of overdraft protection users generating 71 percent of all fee-based overdraft fees. Repeat users are most often low-income, single, non-white renters. The Center for Responsible Lending also reported that financial institutions generated \$17.5 billion in fee income through so-

called “courtesy” overdraft protection programs in 2006 alone.

DCA’s Office of Financial Empowerment’s (OFE) Neighborhood Financial Services Study found that the high cost and unpredictability of overdraft fees can drive consumers, especially those with low incomes, away from banking relationships. OFE’s research also found that one in four checking account holders had overdrawn their accounts at least once in the last few months. The 31 percent of survey respondents who were unbanked cited excessive fees as the most common reason they avoided mainstream banking.

DCA recommended to the Federal Reserve that the application of opt-in overdraft protection, instead of automatic “courtesy” overdraft protection, be implemented under the following conditions to ensure the most effective and comprehensive protection of consumers:

- **One-time debit and ATM transactions.** Consumers must opt into overdraft coverage of one-time debit and ATM transactions. Debit and ATM overdrafts are the most costly, and should, therefore, be covered by the strongest consumer protection: opt-in. However, DCA recommends that overdrafts caused by check, Automated Clearing House (ACH) transactions and recurring debit transactions be defaulted to “opt out,” given that these overdrafts may generally be in consumers’ best interest due to the fees associated with bouncing a check or failing to pay a bill in a timely way.
- **Real-time choice.** Consumers should be notified if a transaction will result in a negative account balance and given the opportunity to choose whether or not to accept the overdraft fee.
- **Written confirmation.** Consumers should receive written confirmation of their overdraft product selection.
- **Notifications and ability to change preference.** Consumers who opt in to overdraft protection coverage should be notified after incurring non-sufficient funds (NSF) fees and be given the option to switch their selection when they are notified.
- **Overdraft disclosures.** Overdraft disclosures should clearly outline the costs of “courtesy” overdraft programs as well as the alternatives being offered.
- **Existing accounts.** Consumers with existing accounts should be afforded the same protections offered by opt-in overdraft coverage as new accountholders.
- **Debit holds.** Consumers should not incur avoidable NSF fees as a result of excessive debit holds.

The Cities for Financial Empowerment (CFE), a coalition of municipal governments that uses city government leverage to improve access to safe and affordable financial products and services also submitted recommendations to the Board of Governors requiring banks to obtain consent to enroll consumers in overdraft protection programs. The CFE Coalition is led by Mayor Michael R. Bloomberg’s representative, Consumer Affairs Commissioner Jonathan Mintz, and San Francisco Mayor Gavin Newsom’s representative, Treasurer José Cisneros. The other member cities are Chicago, Illinois; Los Angeles, California; Miami, Florida; Providence, Rhode Island; San Antonio, Texas; Savannah, Georgia; and Seattle, Washington.

For more information about DCA's recommendations to the Board of Governors of the Federal Reserve System on overdraft protection programs, or to download the Neighborhood Financial Services Study, please visit www.nyc.gov/consumers.

OFE is the first local government initiative in the nation aimed expressly at educating, empowering, and protecting those with low incomes, so they can build assets and make the most of their financial resources. OFE is the first program to be implemented under the Center for Economic Opportunity as part of Mayor Bloomberg's aggressive efforts to fight poverty in New York City.

DCA enforces the Consumer Protection Law and other related business laws throughout New York City. Ensuring a fair and vibrant marketplace for consumers and businesses, DCA licenses more than 70,000 businesses in 55 different industries. Through targeted outreach, partnerships with community and trade organizations, and informational materials, DCA educates consumers and businesses alike about their rights and responsibilities. OFE is the first municipal office of its kind in the nation with a mission to educate, empower and protect New Yorkers with low incomes, to help them make the best use of their financial resources to move forward economically. For more information, call 311 or visit DCA online at www.nyc.gov/consumers.