NCL appreciates this opportunity to present testimony before the DC Committee on Public Services and Consumer Affairs on the “Gift Card Protection Act of 2009,” introduced by Councilmember Mary Cheh. We applaud Councilmember Cheh for drafting this bill, which will help to protect consumers from unfair fees and penalties that are currently attached to many gift cards for sale in the District, but we would like to see the bill expanded and strengthened, as described below.

The Federal Reserve estimates that the gift card market, including retailer and bank-issued cards is a $56.2 billion business.\(^1\) While gift cards are a flexible, convenient gift option, consumers often do not understand or may fail to take into account penalties that can be attached to these cards. From expiration dates, to maintenance and inactivity fees, to card replacement fees, the cost of using a gift card

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can quickly add up if consumers are not careful.

During the 2008 holiday season, the National Consumers League, Consumer Action and the Montgomery County (Maryland) Office of Consumer Protection issued a “Gift Card Holders Bill of Rights,” calling on the industry to ease the burden on consumers by lifting expiration dates, lowering fees, and taking other pro-consumer steps. We believe that the consumer voice generally, and this Gift Card Holders Bill of Rights, specifically, may have helped influence certain company decisions to ease gift card costs for consumers. For example, American Express announced last week that it is “eliminating monthly fees on all of its gift cards, including those now in stores, those headed to market for the coming holidays, and those already purchased that are in consumers’ wallets and purses.”

We are pleased that this bill addresses several of the demands in our “Gift Card Holders Bill of Rights”. Section 3, for example, says “After January 1, 2010, a person may not sell or issue a gift certificate or gift card that, within 4 years after the date of purchase, is subject to expiration or a fee or charge of any kind.” We had called upon the industry to drop all expiration dates on cards and many have done so.

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2 [http://www.nclnet.org/giftcards/](http://www.nclnet.org/giftcards/)

3 [http://online.wsj.com/article/SB10001424052748704471504574444971061861780.html?mod=googlenews-wsj]
We also like this bill’s Section 4 provisions calling for all terms to be printed in clear and conspicuous writing, with a toll free number required where the consumer can obtain balance and fee information. We would further recommend that there be a requirement that all disclosures and the toll-free customer service lines be make available in Spanish as well.

However, we respectfully suggest that this bill be strengthened and expanded. First, it is worth noting that the federal Credit Card Accountability, Responsibility, and Disclosure Act of 2009\(^4\) has addressed expiration fees and takes effect next year - to prohibit gift cards (store issued or bank issued “gift cards”) from expiring before 5 years from the date of purchase or when money was last loaded onto a card, and prohibits fees for the first 12 months.

The basic provisions of the federal bill include:

- Gift cards required to remain active for at least five years from the day of their activation.

- Dormancy or inactivity fees on gift cards can no longer be imposed unless there have been no activity in a 12-month period.

- Dormancy or inactivity fees must be clearly disclosed to gift

card buyers.

- If the gift card expires after 5 years, the terms of expiration needs to be clearly disclosed to gift card buyers.

We believe it is important for the District’s law to provide greater consumer protections than the federal CARD Act. The CARD Act specifically states that it does NOT preempt stronger state legislation. This gives the District of Columbia the chance to move forward in areas that the new federal law CARD law doesn’t address.

Included below are suggested provisions for expanding Councilmember Cheh’s proposed Gift Card Protection Act of 2009:

- Gift cards should not have expiration dates. -- Gift card holders have the expectation that their cards are as good as cash at a retailer. They should be able to use their cards regardless of when they received the card
- Fees assessed upfront on a card purchase should not exceed five dollars or ten percent of the value of the card, whichever is less. Right now the upfront fees on some gift cards are higher than 10%.
- Cards with a balance of five dollars or less should be redeemable for cash with no fee. -- Many cards are unusable when consumers attempt to make purchases greater than the
value of a card. Many retailers are unable or unwilling to attempt a “split tender” transaction to address this issue. As such, we believe that consumers should be able to redeem gift cards with a remaining value of $5 or less for cash, without a fee.

- Some portion of unclaimed funds should accrue to a state fund to be used for the specific benefit of consumers. In no case should unused funds go back to the retail credit card issuer. We suggest that an appropriate use of such monies would be to support a fund to compensate victims of consumer fraud, grants to non-profit organizations that work on fraud issues, and support for programs to educate the public about consumer fraud.

- Funds from the sale of gift cards should be segregated and held in trust accounts so as to be automatically honored in the event of the cards issuer’s bankruptcy. Recent retailer bankruptcies, such as the case of The Sharper Image chain of stores, have resulted in consumers being unable to use their gift cards or only being able to redeem their cards for pennies on the dollar. Consumers who purchase gift cards have, in effect, prepaid for goods and services and their purchases should be honored, regardless of the bankruptcy status of the card issuer.

These suggested provisions come directly from our Gift Card Holders
Bill of Rights, referenced above, issued by the League and two other consumer organizations last year.

We believe that these provisions, if adopted into law in the District of Columbia, would strike the appropriate balance, and are fair both to retailers or others issuing gift cards and to consumers. If these changes were adopted, the District would be in the vanguard of states offering the strongest consumer protections for gift card holders.

Thank you once again for giving the National Consumers League the opportunity to testify before you today. We look forward to working with Councilmember Cheh and members of this Committee to provide needed gift card consumer protections for residents of the District of Columbia.