

September 24, 2007

The Honorable Barney Frank
Chairman
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Frank and Ranking Member Bachus:

On Tuesday, September 25, the House Financial Services Committee is scheduled to mark up an amended version of H.R. 946, the “Consumer Overdraft Protection Fair Practices Act.” This legislation, while well intentioned, represents a radical restructuring of the payments system that takes unprecedented steps toward governmental fixing of terms and, effectively, prices for payment services. H.R. 946 would reverse established agency guidance and impose considerable cost on the payment system, much of which would be absorbed by consumers. The bill would also impose a regulatory regime that will frustrate consumers, reduce their choices, and cause them to suffer additional penalties for returned payments.

The bill is premature. The sponsor of this legislation, House Financial Services Financial Institutions and Consumer Credit Subcommittee Chairwoman Carolyn Maloney, has requested that the GAO conduct a study on overdraft protection. The House Financial Services Committee, the financial services industry, banking regulators and others have provided the GAO with a substantial amount of input on the study. Although this GAO report is underway, the markup has been scheduled to occur before the GAO has time to even summarize, much less finalize, its report.

H.R. 946, as written, has technical problems, and is in many ways simply impossible to put into practice. Below are a few of our more major, substantive concerns.

Opt-In at Account Opening

The proposed legislation would require existing and new bank customers to “opt in” in order to have overdrafts paid. This means that if they do not take action to opt-in, their payments will be returned or denied. Payments covered include those by check, debit, card, and automatic electronic payment. This means important payments, such as mortgage and rent payments, credit card payments, and insurance payments would be returned or disapproved. Consumers would suffer. They would pay additional fees imposed by the payment recipient. They would be embarrassed about their inability to pay for a meal already consumed -- even if they had a deposit in the pipeline that would have covered the transaction.

Payment Order

In processing payments, banks generally post deposits first (regardless of when received) and then post payments in order from highest to lowest. The payment processing order is disclosed to consumers. Consumers have indicated that they prefer high-to-low processing because it ensures that their most important payments -- for example, mortgage loan, auto loan, credit card, utility bill -- which tend to be high-dollar payments -- will be paid first, and thus will be least likely to bounce.

H.R. 946 eliminates consumer choice in this area, and dictates that all checks and other charges must be processed in a way that reduces one fee: bank-charged overdraft fees. It completely ignores the consequences of this action, and the third-party fees that may increase. And, most importantly, it abandons disclosure and consumer choice in favor of government-mandated terms for the payment system.

H.R. 946 Should be Opposed

We strongly oppose H.R. 946 and would encourage the Committee to wait for the GAO to make its findings known before considering this legislation.

Sincerely,

American Bankers Association
America's Community Bankers
Independent Community Bankers of America
Consumer Bankers Association
The Financial Services Roundtable

Cc: Members of the House Financial Services Committee