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Prepared Remarks of Congresswoman Maloney, Financial Institutions Subcommittee Chair

Subcommittee Hearing: "Overdraft Protection: Fair Practices for Consumers"

The hearing will come to order. I would like to welcome all the witnesses and thank them for their time and their testimony.

This hearing on overdraft protection and the bill I have reintroduced with Chairman Frank to ensure fair practices for accountholders, H.R. 946, is a topic I have been hoping to have hearings on for some time, but the Subcommittee has been busy on other equally pressing matters. The issue of overdraft protection fees resonates with me because it clearly resonates with Americans across the country in each of our districts.

Just recently, for instance, Bob Sullivan's MSNBC.com blog, "the Red Tape Chronicles," featured an overdraft victim and drew a record 1,300 comments from writers expressing bitterness and frustration toward their banks and describing their own overdraft fee nightmares. Customers are right: banks are making a great deal of money on overdraft fees.

According to the report released today by the Center for Responsible Lending, overdraft fees amount to \$17.5 billion in 2006, an increase of 75 percent from the \$10 billion the CRL calculated banks made on overdraft fees in 2004.

In my view, banks should be able to charge whatever they want - let me say that again, banks should be able to charge whatever they want - for the service of overdraft protection, but individuals should have notice of the charges ahead of time and the opportunity to reject the transaction before incurring the charges. It's that simple.

Hidden overdraft fees are unfair, and fairness is an essential component of a safe and sound banking system.

Customers should be told when they are about to take out more money than they actually have. And customers should be able to choose if they want overdraft protections or if they would rather not pay the fees and not have the transaction. Customers should be given information about how much overdraft protection plans cost, so they have the opportunity to compare the cost to other forms of overdraft protection such as linking their checking account to their savings account, or opening a line of credit.

These are common sense - almost due process - principles, and they are the basis of the bill I have reintroduced in this Congress with Chairman Frank, H.R. 946, the "Consumer Overdraft Protection Fair Practices Act." Not surprisingly, the data shows that customers overwhelmingly want what this bill provides. They want to know if they are going to pay an overdraft fee and be able to cancel the transaction if they are going to pay. The CRL report released today shows that almost all customers would cancel an ATM withdrawal if notified they had insufficient funds.

This bill is modeled on my successful initiative to require disclosure of ATM fees. We don't intend to regulate what banks charge for this service, just to give consumers an informed choice.

Everyone is now perfectly comfortable with the ATM notices that tell you that you may be charged a fee for using the ATM. Lots of us use ATMS happily every day and pay the fee. I suspect banks make money off of that service.

Yet when that legislation was introduced, you would think the sky was about to fall from the industry's perspective: they didn't want customers to be told about the fee. When you cut through the jargon, what industry seems to be saying is that they just can't tell you how much you have in your account, so they can't tell you if you are going to overdraw or not.

This strikes me as straining credulity. First, at most ATMS you can ask for your balance. Is that number they give you wrong?

Second, not so long ago, as I am sure many of my older colleagues will recall, if a customer asked an ATM for more money than they had in their account, the ATM would simply say "no." If you wrote a check for more than you had in your account, it would bounce.

Many people mistakenly think that is still the case. At some old-fashioned banks, it is. So, it can still be done.

But today, just about anyone with a checking account in any national bank is automatically enrolled in something called "courtesy overdraft protection," under which the bank will allow withdrawals that exceed balances and then assess a fee of about \$35. After an account "goes negative," every account withdrawal - by ATM, by debit card purchase, by online bill payment - incurs another fee.

It's easy to wrack up four or five of those in a weekend, as one young man told me he did while he was taking care of his sick mother and made multiple small purchases at the corner drugstore. I should add that this young man, Karney Hatch, is a filmmaker and has gone on to make a documentary about overdraft, called "Overdrawn!" which is opening shortly. I hope you all have a chance to see it because it shows what unfair overdraft charges are doing to real people across the nation.

Overdraft fees are particularly unfair because they disproportionately affect those who can least afford them. We will hear today from Sarah Ludwig who can tell us how they are impacting lower-income populations in New York, but this is true everywhere.

Ironically, as the Center for Responsible Lending's report this past winter showed a very large percentage of overdraft fees arise from debit card purchases. Remember, debit cards were supposed to prevent people spending more than they had, as purchases are withdrawn directly from checking accounts. In fact, when they were introduced, it was impossible to spend more than you had with a debit card. So if like many Americans, you lived from paycheck to paycheck, your debit card helped you stay within your means.

But with "courtesy overdrafts," debit cards have become a lot more like credit cards - only worse. Not only can you overspend, but the loan you are given as a result is just about the most expensive loan out there. The CRL report released today also shows that customers pay over two dollars in overdraft fees on debit card overdrafts for every dollar they overdraw.

The effective annual percentage rate on debit card overdraft fees can be 1,000 percent. In many cases, consumers hovering near a zero balance would be far better off taking out their credit cards, even if they are revolving users who pay interest immediately on the purchase.

So in this year's version of the overdraft reform bill, we have included a provision applying specifically to debit card transactions.

We need legislation, because the regulators are not doing their job in this area.

Two years ago, the Federal Reserve issued new rules governing overdraft protection, which found that overdraft fees were not a loan and thus not subject to Truth in Lending disclosure practices, which would include clear publication of the annual percentage rates. Under the Fed's rule, only banks that market courtesy overdraft protection service must explain the cost of the money. This seems backwards to me.

Banks that keep the service and the fees quiet only have to include small-print notices when you open your account. My bill would redefine overdraft fees as loans so that they would be subject to Truth in Lending.

One of the ways banks increase overdraft fees is to order deposits and withdrawals on any particular day so as to increase the likelihood that the account will be overdrawn. My bill prohibits such intentional manipulation.

I have been disappointed that the OCC and the Fed have not issued better guidance on this point as well. Several of the OCC's recent letters bother me in that they seem to encourage check manipulation.

I know that my own state of New York had addressed overdraft fees but was unable to sustain that position in the face of the weak national standard of the OCC. States that want to protect their bank customers from unfair fees are having a hard time.

People want to live within their means. It is bad policy to prevent them from doing so. Americans deserve to know what is going on with their money.

I hope this is the first step towards fairer and more transparent practices on overdrafts.

I look forward to the testimony.

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