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Via e-mail

Dear Mr. Blackwell,

Your recent article, "Study Calls Overdraft Shift Abuse of Customers," featured in the July 12 issue, was a well-balanced piece that outlined Rep. Carolyn Maloney's proposed bill, HR946, to further regulate overdraft protection programs. Already regulated by guidance from the federal agencies and Regulation DD, courtesy pay is an important offering to customers. Maloney herself admits that overdraft protection is a "valuable service." Program requirements as described by HR946 could, however, force banks to stop offering courtesy pay as a customer service due to costly technology and overall program changes.

Maloney asks that banks alter ATM and debit processes -- alterations that would require significant time and money on behalf of the bank and its third-party vendors. Alterations whose price would be borne by the consumer, and/or make it prohibitive for financial institutions to offer the service.

If a bank does not abandon the program due to expensive alterations, the bill will change those aspects of overdraft protection that make it most valuable. Courtesy pay programs help customers avoid the embarrassment of insufficient funds by paying, rather than returning to a merchant, overdraft items. HR946 calls for customers/members to approve transactions that are about to overdraw their account. Embarrassment is inevitable when customers are informed at the point of sale they do not have sufficient funds and asked if they want to continue with the transaction -- this is the same from an emotional standpoint as denying the transaction outright.

The bill would also subject overdrafts to the Truth in Lending Act, which requires banks to disclose an APR for the fees. Eric Halperin, the director of the Center for Responsible Lending's Washington office who is referenced in your article and is a supporter of the proposed legislation, admits that "consumers may not know the ins and outs of APRs, but they know a lower one is better." More meaningful are the monthly and year-to-date overdraft fee totals, which are already required on statements for advertised overdraft programs under current federal guidance and Reg DD.

In a study from the Center for Responsible Lending, banks have also come under fire for the increase in overdrafts and the income the fees generate, even though Maloney, who also sponsored the study, concedes “banks have every right to make money on this valuable service.” An increase in overdraft fees simply points to customer use of the service – to supply and demand. Financial institutions charge a fee for NSF items, whether they pay or return the items. Overall, customers would prefer the item be paid by their bank rather than denied.

Whenever courtesy pay programs are evaluated, horror stories of overdrafts are told over and over. For every dramatic example of customer abuse by a bank, there are hundreds of notes and phone calls from customers thanking their financial institutions for the service. No one knows better than a customer what transactions are pending on his/her account. And no one should know better than the customer when the account is going to overdraw.

Our financial institution clients know us for offering the “Responsible Approach” to overdraft protection programs. We go to great lengths to ensure our program’s compliance with current guidance and regulations –even offering a 100 percent compliance guarantee. We commend legislators’ and regulators’ diligent and thorough work that resulted in current program requirements, but we strongly feel that Maloney’s proposed bill could spell the end for courtesy pay programs. Should that be the case...neither the customer nor the bank will benefit.

Best regards,

Barrett Nichols
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