

109TH CONGRESS  
1ST SESSION

# H. R. 4415

To establish a fair order of posting checks and deposits to prevent unjust enrichment of financial institutions from fees that accrue only by virtue of the order used by the institution for posting checks and deposits, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2005

Mr. MEEK of Florida (for himself and Mr. RYAN of Ohio) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To establish a fair order of posting checks and deposits to prevent unjust enrichment of financial institutions from fees that accrue only by virtue of the order used by the institution for posting checks and deposits, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Consumer Checking  
5       Fairness Act”.

1 **SEC. 2. FAIR ORDER FOR POSTING CHECKS.**

2 (a) ORDER OF CHECKS POSTED.—Section 607 of the  
3 Expedited Funds Availability Act (12 U.S.C. 4006) is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(f) NUMERICAL ORDER OF POSTING CHECKS.—

7 “(1) IN GENERAL.—Subject to paragraph (2),  
8 in the process of posting checks presented for pay-  
9 ment against a checking account used primarily for  
10 personal, family, or household purposes after the  
11 close of any business day, the checks shall be posted  
12 by a depository institution against the account in the  
13 numerical order of the checks, beginning with the  
14 lowest number.

15 “(2) NOTICE AND CUSTOMER CONSENT FOR  
16 DIFFERENT POSTING ORDER.—A depository institu-  
17 tion may alter the order required under paragraph  
18 (1) for posting checks against a checking account  
19 used primarily for personal, family, or household  
20 purposes only if—

21 “(A) specific notice of the alternate posting  
22 order is given by the depository institution to  
23 the prospective accountholder verbally and in  
24 writing before the account is opened (using a  
25 document that is separate from the account ap-  
26 plication and any other document provided to

1 the prospective accountholder in the process of  
2 opening the account) which fully describes the  
3 posting process and explains in clear and easy-  
4 to-understand language the possible con-  
5 sequences to the accountholder of the alternate  
6 posting order; and

7 “(B) the depository institution obtains  
8 from the accountholder, and retains in its  
9 records, a written acknowledgement of the re-  
10 ceipt by the accountholder of the notice re-  
11 quired under subparagraph (A) and the written  
12 consent of the accountholder for the use of the  
13 alternate posting order.”.

14 (b) CREDITS REQUIRED TO BE POSTED BEFORE  
15 DEBITS.—Section 607 of the Expedited Funds Avail-  
16 ability Act (12 U.S.C. 4006) is amended by inserting after  
17 subsection (f) (as added by subsection (a) of this section)  
18 the following new subsection:

19 “(g) ORDER OF POSTING DEBITS AND CREDITS.—  
20 In the process of posting credits and debits against a  
21 checking account used primarily for personal, family, or  
22 household purposes after the close of any business day,  
23 all deposits shall be credited by a depository institution  
24 to the account before debiting any check drawn on the  
25 account and presented for payment.”.

1       (c) REGULATIONS.—The Board of Governors of the  
2 Federal Reserve System shall—

3           (1) prescribe such regulations as may be nec-  
4       essary to implement the amendments made by sub-  
5       section (a) and (b); and

6           (2) publish such regulations in final form before  
7       the end of the 180-day period beginning on the date  
8       of the enactment of this Act.

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