bringing together Red Cross chapters from each of New York City's five boroughs.

This year, the American Red Cross is leading much-needed efforts to assist those whose lives were upended by Hurricane Katrina. Since the hurricane made landfall, the Red Cross has provided shelter, food and more than $300 million to nearly 500,000 families. The ARC/GNY, for its part, has sent more than 100 trained staff members and volunteers to the Gulf Coast region, operated the largest Red Cross call center in the nation and sheltered nearly a thousand displaced families. All the while, the ARC/GNY continues to respond to tragedies closer to home: On average, the organization helps New Yorkers recover from eight fires, floods, building collapses and other disasters each day.

It is fitting that the staff, friends and volunteers of the New York Red Cross have chosen to honor another devoted humanitarian, President Bill Clinton. Since leaving office, President Clinton has devoted himself to helping underprivileged people around the world, in particular assisting those afflicted by the HIV/AIDS pandemic in Africa and the Asian tsunami disaster. During his tenure in the White House, Clinton presided over an economy that added 22 million jobs, worked with allies to put an end to ethnic cleansing in Bosnia and Kosovo, and played a major role in securing a meaningful and lasting peace in Northern Ireland.

Mr. Speaker, I request that my colleagues join me in recognizing the work of both the Red Cross in Greater New York and President Bill Clinton to help families displaced by disasters, war and disease. I am delighted to offer the ARC/GNY and President Clinton my very best wishes for many more decades of service to the neediest.

JOHN LAFALCE CONTINUES WORK FOR CONSUMER PROTECTION

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 24, 2005

Mr. FRANK of Massachusetts. Mr. Speaker, my predecessor as the ranking Democrat on the Financial Services Committee, John LaFalce, continues to be a very informed, thoughtful advocate of consumer protection within the context of a well-functioning financial system.

On October 11, he wrote to the various bank regulators in support of legislation introduced by myself and Representatives MALONEY, SANDERS, LEE and MCCARTHY, H.R. 3449, dealing with abuses in overdraft protection.

Mr. LaFalce's thoughtful analysis of the problem and the reasons for addressing it are very persuasive, and because this is an important issue that we are addressing, I ask that his comments to the Federal regulators be printed here.

The Federal banking agencies recently issued guidelines for the operation of overdraft protection programs, and the Federal Reserve Board recently revised its Regulation DD with respect to the advertising of overdraft protection programs. Although well-intentioned, these new guidelines fall far short of what is needed in this area, and in many ways the recent regulations by the Fed only make matters worse.

I call H.R. 3449 to your attention because I believe that the problems it deals with are enormous, and can and should be dealt with, promptly, by regulation. I shall highlight some of the more significant problems dealt with by H.R. 3449 and urge the bank regulators to address those problems.

I. BANK CUSTOMERS GENERALLY DO NOT KNOW OF OR CONSENT TO EXPENSIVE OVERDRAFT PROGRAMS

Overdraft protection has been demonstrated to be the most expensive form of consumer credit, with effective rates of interest far higher than even payday loans. Unlike other forms of consumer credit, however, upfront information about the overdraft programs has not been mandated under Regulation Z because of an arcane exception for banks covering their customers' incidental overdrafts. As a result of this exception, the logic of which no longer applies to today's automated overdraft protection programs, banks have been able to create a very high-cost, short-term credit product without any obligation to inform consumers of how the overdraft protection works and the actual credit costs involved.

Furthermore, many and probably most consumers are automatically and unknowingly being placed into the bank's most expensive overdraft program, when there are often other better and far less costly alternatives. While consumers may wish to take advantage of an overdraft program, they deserve the opportunity to learn about the program other than through the imposition of the most expensive of overdraft fees, and they surely should be informed of less costly alternatives, and given a choice amongst those alternatives.

H.R. 3449 would ensure that consumers know they are signing up for overdraft protection and the actual costs of utilizing the overdraft coverage by requiring: specific written consent by the consumer to the program; disclosure of the fee for the overdraft service; disclosure of the types of transactions that will trigger the fee; disclosure of the time period in which the consumer must cover the overdraft; and disclosure of the circumstances under which an overdraft will not be honored.

The bank regulators should require such consent and disclosure, including information concerning any less costly alternatives offered by the bank, such as overdraft lines of credit or automatic cash transfers from linked accounts. Almost without exception, banks are not doing this.

II. THE REGULATORS HAVE LITTLE OR NO DATA TO QUANTIFY THE PREVALENCE, MAGNITUDE, OR NATURE OF THIS PROBLEM AND SHOULD COLLECT THIS DATA

On February 17 and 18, 2005, Sanford C. Bernstein & Co. released a study indicating that it was not uncommon for banks to have a large percentage of their pre-tax income attributable to fees. For example, at Wells Fargo and Wachovia it was 25%, at Mellon it was 30%, at Bank of America it was 33%, at AmSouth it was 42%, at Washington Mutual it was 51%, and at TCF Financial it was 82%. They also concluded that there is a criminal risk in actively marketing bounce protection programs.

On May 2, 2005, a Business Week article indicated that ''overall, banks raked in $32 billion in account service fees last year, up from $21 billion in 1999.'' They further stated that ''fees have become such a powerful source of profits that they exceed earnings from mortgages, credit cards and all other lending combined.'' Additionally, the article refers to a banking analyst at Sanford C. Bernstein & Co. who said that ''the poorest 20% of the country's 135,000,000 checking customers generate 80% of the $12 billion in annual overdraft fees.''

On May 5, 2005, the American Banker reported that in a study by one bank it was discovered that individual ''customers are spending thousands of dollars on overdraft fees each year. One retail customer paid $6,800.00 in the fist eleven months last year. At roughly $25.00 an overdraft, that works out to an average of about 22 bounced checks per month. The top business customer paid $8,825.00 in fees. The smallest total racked up by any of the 300 customers it analyzed was about $900.00 a year, or roughly three nonsufficient fund charges a month, assuming a $25.00 average.''

On May 26, 2005, the Center for Responsible Lending issued a report conservatively estimating that ''borrowers pay more than $10 billion dollars in overdraft loan fees per year.'' They actually believe the ''current amount of overdraft loan fees could be as large as $22.7 billion.''

On June 9, 2005, the Consumer Federation of America issued a report indicating that:

(1) ''At least 27 of the 33 institutions surveyed (81.8 %) have courtesy overdraft provisions written into the fine print of their account agreements that say that the bank may or may not, at its discretion, cover debits to checking accounts that would overdraw the account. All of these banks allowed depositors to overdraw their accounts at the ATM, 26 (78.8 %) allow overdrafts at point-of-sale debit transactions at merchants, and 17 (51.5 %) allow overdrafts from automated or scheduled electronic payments.''

(2) ''Twelve of the banks (36.4 %) charge additional fees for not repaying the overdraft within a certain period. These sustained overdraft charges begin on average after the fifth day the account is deficient. Seven banks charge an average $5.57 per-day sustained overdraft fee and five banks charge an average $27.50 single sustained overdraft fee.''

(3) ''Contractual overdraft protection is cheaper than discretionary courtesy overdraft.'' The fee for a link to a savings account averaged $7.38; a link to a credit card averaged $10.00; links to lines of credit averaged $5.20; and the automatic courtesy overdraft averaged $28.57.

The five federal banking regulators have a need to know what is happening in the institutions they are regulating. To do that, these agencies should have financial institutions report, on a going-forward basis by month or quarter:

(a) The number of customers charged these fees, distinguishing between accounts where the overdrafts are rejected and unpaid versus accounts where the overdrafts are covered via overdraft protection (and excluding linked credit and deposit accounts, since they are reported elsewhere);

(b) Total fee income, again distinguishing between the total fees on overdrafts that are unpaid (i.e., true NSF fees) versus the total fees on overdrafts that are covered via overdraft protection;

(c) The average number of days overdraft protection funds are outstanding before being repaid; and

(d) The total overdraft amounts which are classified past due, in default or written off during the relevant period. Financial institutions in fact have all of this information, so it should not be a hardship for them to provide this information in call reports. This data will give the regulators important information about the programs and potential safety and soundness exposures.

III. BANKS ARE ADVERTISING ''FREE'' CHECKING ACCOUNTS WHILE MAKING ENORMOUS FEES ON OVERDRAFT PROGRAMS; THIS SHOULD BE RESTRICTED

According to one of the largest overdraft protection program vendors in the country,

banks profit from overdraft protection whether or not the program itself is advertised. This is because profits are made from customer usage, whether the usage is planned or purely inadvertent. Not surprisingly, banks are pairing their overdraft protection programs with accounts that have strong consumer appeal, such as the so-called free checking accounts.

The Fed's recent revisions to Regulation DD and its related staff commentary were intended to rein in deceptive advertising of overdraft programs but had the perverse effect of creating an incentive to further hide the program from consumers. This is because the reforms mandated by the final rule, including the need to disclose the total monthly and annual overdraft fees incurred by the individual customer, are triggered only if the consumer is told about the program in advance. So long as a bank does not advertise the overdraft feature, the bank can fully promote its transaction accounts as being ''free'' and, just as perniciously, can avoid showing the total monthly and annual costs of overdraft fees in the periodic statement. Thus, the Fed's new rules that become effective in July 2006 will, in effect, create a safe harbor for banks to legally entrap customers.

H.R. 3449 would close this loophole and further prevent other deceptive marketing practices by prohibiting: advertisements of an account as ''free'' or ''no cost'' if the account includes overdraft protection; the marketing of overdraft protection as a short-term credit service; statements that the bank will cover any and all overdrafts if the bank, in fact, reserves the right not to do so; and statements that a negative account balance may be maintained, if the consumer, in fact, has to promptly cover the overdraft.

The bank regulators should make these prohibitions effective by regulation.

IV. ATM MACHINES DO NOT ALWAYS DISTINGUISH BETWEEN ACTUAL ACCOUNT BALANCES AND OVERDRAFT PROTECTION AMOUNTS

Customers are vulnerable to overdraft fees when accessing their funds from ATMs. While there are guidelines constraining this practice, banks have not been required to provide any sort of warning that a requested withdrawal would result in an overdraft of the customer's account. Some banks have gone well beyond relying upon a customer's ignorance of their actual balance, intentionally causing their customers to believe they have more funds in their accounts than actually is the case. For example, there are instances where banks have programmed their ATMs to show the actual account balance plus the available overdraft coverage as the balance available to the customer. This trick causes customers, particularly those with the lowest balances and who probably are the most financially vulnerable, to inadvertently overdraft their accounts and incur one or more overdraft fees.

H.R. 3449 would ensure that consumers who may overdraft their accounts at an ATM are given a chance to avoid overdrafting their accounts by requiring banks: to inform the consumer that a requested transaction will result in a specified overdraft fee, and to give the consumer an opportunity to cancel the requested transaction; and to disclose only the actual dollar balance in the account in response to a balance inquiry.

The bank regulators should adopt either the requirements of the HR. 3449 or their own guidelines as effective regulations.

V. OVERDRAFT PROTECTION FOR DEBIT CARDS MAY CONSTITUTE THE LARGEST ABUSE AND SHOULD BE RESTRICTED

The ordinary consumer probably writes far fewer checks and makes far fewer cash withdrawals from ATMs per month than the number of times he or she uses a debit card, for a debit card is often used daily and frequently.

In one day, for example, a debit card might be used for breakfast, lunch or dinner; at a grocery store, the cleaners, the gas station, the book store, the florist shop, the movies, etc. If overdraft fees were applicable, at $30.00 per overdraft, nine transactions would incur $270.00 in fees in one day.

Further, unlike checking accounts or ATMs, there is little likelihood of keeping an accurate account of one's cash balance. Hence, the potential for large overdraft fees from the use of debit cards is enormous.

There is no known data on this, for the regulators do not collect data. However, anecdotal information indicates that overdraft programs attached to debit cards may well be the most profitable source of fee income for banks, and the program that most preys upon consumers.

H.R. 3449 falls short here. It simply calls for the Fed to study the feasibility of informing customers of a potential overdraft, but study is not needed to tell us that strong regulation in this area would result in vendors developing practical and cost-effective solutions.

The bank regulators should either prohibit overdraft protection programs in connection with point of sale debit cards, or restrict the number of overdrafts to one per billing cycle with immediate and appropriate notification upon that single event.

VI. MANY BANKS AND BANK VENDORS MANIPULATE PAYMENT PROCESSING TO MAXIMIZE FEE INCOME

Many and perhaps most banks have programmed their computers to process customer payments in a manner designed to maximize overdraft fees; i.e., post the largest transaction first. In fact, many vendors' contracts often take a smaller percentage of each overdraft charge, provided the bank will pay the largest checks first, and then base their compensation on the amount of increase in fee income. This is all the more offensive given that, with overdraft protection, no checks get bounced, so processing the largest checks first is simply price gouging. To date, only the OTS has called for an end to this practice.

H.R. 3449 ensures that banks do not manipulate transaction processing in order to maximize the number of overdraft fees imposed on consumers, prohibiting both the delay of the posting of the deposits in an account and the posting of checks in an order designed to trigger one or more overdrafts.

The regulators should examine the contracts between the banks and the vendors to determine whether the compensation is based upon a percentage increase in fee income and whether the vendors are agreeing to take a reduction in their per overdraft compensation if the banks will permit them to manipulate the posting of checks to increase the number of overdrafts charged.

The bank regulators should adopt the provisions of H.R. 3449 by regulation, and should prohibit contracts between banks and vendors containing compensation provisions based upon increases in fee income. Those practices are unsafe, unsound, unfair, and deceptive.

VII. THE FEDERAL REGULATORS PUBLISHED AN EXCELLENT AND LITTLE KNOWN PAMPHLET DEALING WITH OVERDRAFT FEES THAT SHOULD BE ACTED UPON

A pamphlet virtually unknown to consumers, entitled ''Protecting Yourself from Overdraft and Bounced-Check Fees,'' and published by the five Federal regulators, states that there are ''other ways of covering overdrafts that may be less expensive.''

First, very few customers know this. Second, most banks do not want their customers to know this or to choose a less expensive option (that is why it is usually only the ''most expensive'' option that is made automatic). Third, in my experience, few bank tellers or bank managers are aware of the various options, or of the fees associated with each option.

H.R. 3449 calls upon the Fed to study the feasibility of consumer surveys and market testing programs.

I believe the bank regulators should simply engage in a ''mystery shopping'' program to establish the knowledge (or lack thereof) of bank personnel and to observe their actual practices. Once the agency does this, it will better understand the imperative to require a bank, upon account opening, to disclose the various options and fees, and have the customer select and consent to the option of their choice.

VIII. CONCLUSION

H.R. 3449 succinctly highlights the major problems with overdraft protection programs. Nothing here, however, requires a legislative solution. I urge the regulators, therefore, to take the lead by implementing regulatory solutions, as articulated above, and that incorporate many of the provisions of H.R. 3449.

Further, much can be done to reshape the industry by enforcing even the limited existing rules and regulations. Strong enforcement actions against the more egregious actors could set the tone for more responsible overdraft programs. So far, the OCC is the only agency to bring an ''unfair and deceptive'' action against any bank; I encourage every regulator to use this tool where appropriate.

HONORING THE REDBUD FAMILY HEALTH CLINIC IN CLEARLAKE, CALIFORNIA

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 24, 2005

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize the grand opening of the Redbud Family Health Center in Clearlake, CA on Sunday, October 23, 2005.

The Redbud Family Health Center is affiliated with the local Adventist Health Redbud Community Hospital. This new state-of-the-art 33,400 square foot facility located in the City of Clearlake provides services such as primary care medicine, dental services, pediatric services, a behavioral health program, obstetric and women's health services, general surgery, orthopedic surgery, cardiac testing services, and cardiac and pulmonary rehabilitation services. There is also a privately owned on-site pharmacy.

Mr. Speaker, each month this center provides superior medical attention to 4,500 residents of rural Lake County. Last year alone, the Redbud Family Health Center cared for 50,400 patients.

The Redbud Family Health Center has taken a leading role in organizing numerous public outreach events such as blood drives, free health screenings, and an Annual Health and Safety Fair which I am proud to co-sponsor each fall. Over $14 million in free and low cost services have been contributed to the community. These are only a few examples of the Redbud Family Health Center's commitment to enhancing the quality of life for all Lake County citizens.