

June 13, 2022

To: Members of the Committee on Financial Services

From: Kirsten Sutton, Executive Vice President, Congressional Relations & Legislative Affairs

Re: ABA's Views on June 14 Full Committee Markup

On behalf of the members of the American Bankers Association (ABA), I am writing to express our opposition to the *Overdraft Protection Act (H.R. 4277)*, which is scheduled for markup this week. This bill – which eliminates consumer choice in favor of congressional judgment– would prevent important payments from being paid, deny customers access to liquidity during challenging times, and cause customers to incur additional fees and inconveniences. Given the range of account choices available today, we believe consumers rather than Congress are in the best position to choose the financial services that best meet their needs.

The *Overdraft Protection Act* would upend a framework that was established in 2009 when the Federal Reserve amended Regulation E to require customers to “opt-in” for overdraft protection for one-time debit card (in-store, “point of sale” purchases) and ATM transactions. This opt-in process involves clear pre-election and post-election disclosures, and consumers may opt-out at any time. The Federal Reserve’s decision to require a consumer’s opt-in only to point-of-sale debit card and ATM transactions was based on consumer testing that demonstrated that consumers want check, ACH, and recurring debit card transactions paid because these transactions tend to be important payments (i.e., rent, car and utility payments). This finding was recently supported by a February 2022 Morning Consult survey that found that 74% of consumers are happy that their depository institution covered an expense when their account was overdrawn.

If the *Overdraft Protection Act* is enacted, depository institutions would be prohibited from charging consumers more than one overdraft fee in a month and more than six overdraft fees in a year, regardless of a consumer’s choice to opt-in. In contrast to the Federal Reserve’s rule, this limit would apply to any overdraft transaction regardless of form of payment – i.e. all check, ACH, bill-pay, debit card (point-of-sale and recurring) transactions. In other words, the bill’s limits on overdraft usage would replace the consumer’s choice with a government mandate.

This bill is also unnecessary because banks of all sizes already offer consumers a wide array of account options, including accounts that do not offer overdraft protection. As an example, depository institutions accounting for 56% of the deposit market offer Bank On-certified accounts — simple, affordable bank accounts that do not charge overdraft or insufficient fund fees. Congress should not limit the choice of consumers who wish to have overdraft services when overdraft-free accounts are so widely available.

We respectfully urge members of the committee to oppose H.R.4277.