Consumer Federation of America
1620 I Street, N.W., Suite 200 * Washington, DC 20006

Testimony of

Jean Ann Fox
Director of Consumer Protection
Consumer Federation of America

Before the Subcommittee on Financial Institutions and Consumer Credit

U. S. House Committee on Financial Services

"Put the Protection Bank into Overdraft Policy --- Supporting HR 946

July 11, 2007

Chair Maloney, Ranking Member Gillmor, and Members of the Subcommittee, my name is Jean Ann Fox. I am director of consumer protection for the Consumer Federation of America (CFA). I appreciate the opportunity to offer our comments in support of HR 946, the "Consumer Overdraft Protection Fair Practices Act."

Consumer Federation of America has a long interest in affordable bank accounts for all consumers, bank insufficient funds fees, high cost loans based on personal checks and debits, bank overdraft loan practices, and big bank fees and practices. We have participated in numerous federal regulatory dockets on these topics and have issued reports over the last decade.[1]

Overdraft loans are high cost, very short-term credit extended to consumers who live paycheck to paycheck. Banks unilaterally permit most customers to borrow money from the bank by writing a check, withdrawing funds at an ATM, initiating a debit or preauthorizing an electronic payment that exhausts the funds available in a checking account. Instead of rejecting the debit card purchase or ATM withdrawal or returning the check unpaid, most banks will now cover the overdraft up to a preset limit and impose a high overdraft fee. A CFA survey found that over eighty percent of the nation's largest banks use the fine print of their contracts to make overdraft loans at steep fees.[2]

[1] See www.consumerfed.org for reports and testimony on overdraft loans, bounced check fees, refund anticipation loans, payday lending, car title lending, EFT-99, and check cashing.
[2] Jean Ann Fox and Patrick Woodall, "Overdrawn: Consumers Face Hidden Overdraft Charges from Nation's Largest Banks," Consumer Federation of America, June 9, 2005.

Consumers do not apply for this form of credit, do not receive information on the cost to borrow bank funds, are not guaranteed that the bank will always cover overdrafts, are not warned when a transaction is about to initiate an overdraft, and are not given the choice of deciding whether to borrow from the bank or cancel the transaction. Banks are permitted to make cash advances through overdraft loans without complying with Truth in Lending cost disclosures, denying consumers the ability to make informed decisions or to comparison shop for the lowest cost small loan.

Just as payday lenders use the borrower's personal check or debit authorization to insure priority payment, banks use contractual right of set-off to pay itself back the amount of the overdraft loan and the fee by taking money out of the next deposit into the borrower's bank account. Overdrafts are typically repaid within days. Overdraft flat rate fees for very short term extensions of credit result in triple and quadruple interest rates for small loans.

Bank overdraft loans disproportionately trap low and moderate income consumers in a cascade of escalating overdraft fees. The billions of dollars collected by banks from their most cash-strapped customers is a burden on consumers most likely to overdraw…the working poor and moderate income, minorities, and on young consumers who are heavy users of debit cards.

Deliberate bank practices and advances in technology make it harder than ever for consumers to keep track of the balance in their bank accounts to avoid overdrafts. Money flies out of consumers' bank accounts faster than ever due to electronic processing of paper checks at the cash register or on receipt for payment of bills, when payment is made by debit card or through preauthorized bill payment. On the other hand, deposits can still be held for the same number of days authorized in 1990 before consumers have access to their own money to cover transactions. Any interruption in direct deposit of benefits or pay can throw family budgets into free fall. Banks set the order for processing deposits and withdrawals to maximize the number of transactions that trigger overdraft fees, often tiered to accelerate the cost burden for consumers.

HR 946, the "Consumer Overdraft Protection Fair Practices Act," is important legislation needed to empower consumers to make informed decisions about using bank overdraft loans and to prevent banks from rigging the system to their advantage.

Consumers Find Lack of Notice and Consent for Overdraft Loans Unfair

Consumers by a wide margin believe they are treated unfairly when banks permit them to overdraw at the ATM without warning. A 2004 survey poll of a representative sample of 1,000 adult Americans conducted for CFA by Opinion Research Corporation International found that an overwhelming majority (82 percent) of consumers thought permitting overdrafts without any notice at the ATM was unfair, while 63 percent said it was "very unfair." Fewer than one in five (17 percent) people thought it was fair.

Banks do not seek affirmative consumer assent when permitting overdraft loans, and consumers are charged expensive overdraft fees without their consent or any prior warning except deep inside the fine print of account disclosure agreements or a notice at the time an account is opened. Consumers think they should be provided the opportunity to affirmatively opt-in to overdraft provisions of their checking accounts. In CFA's 2004 ORCI poll, more than twice as many consumers thought it would be unfair for banks to permit overdrafts without obtaining their customers' consent (68 percent) rather than fair (29 percent).

Bank Overdraft Loan Programs Are Not Overdraft "Protection"

Overdraft loans for a flat fee are **not** traditional beneficial "overdraft protection." Most banks still offer contractual overdraft protection that uses the consumer's own money or an affordable line of credit to cover check or debit transactions that exceed the available funds on deposit. There are three ways that real overdraft protection provides funds: Transfer from a savings account, transfer to a credit card, or a loan made through a line of credit for which the consumer applies. While none of these options is inexpensive, real overdraft protection is much less expensive for consumers and avoids the risk of high cost debt traps. With a real overdraft line of credit, a consumer repays the debt in affordable installments at reasonable interest rates.

Overdrafts used to be handled as ad hoc, occasional services by bank personnel to cover paper checks for good customers. The Federal Reserve Board's Regulation Z, adopted in 1969, exempts overdraft fees from the disclosure requirements of Truth in Lending when two conditions are met: First, the bank does not have a contract with the consumer to pay overdrafts, and second, the fee charged is equivalent to the fee for bouncing the check.[3] That regulation was intended to apply to the bank practice of paying consumers' occasional or inadvertent overdrafts on an ad hoc basis and was considered a long-established customer service.[4]

Banks now automate the overdraft process, using internal matrices or consultant-provided software programs to permit overdrafts for most customers within parameters set by the bank. Banks rely on the fine print of account agreements that authorize the bank to cover overdrafts for a fee at the bank's discretion. While only paper checks used to overdraw accounts, the majority of transactions that now trigger fees are debit card and electronic transactions that would not have been paid in the past. Banks routinely permit the majority of accountholders to overdraw accounts at ATMs and point of sale terminals using debit cards without warning or consent.

The 2005 CFA survey of overdraft fees and services at the 33 largest banks found that fees for traditional, contractual overdraft protection are much lower than big banks charge for overdraft loans. Big bank fees for overdraft transfers from savings accounts averaged $7.38 per transfer. Four of the largest ten banks (Bank of America, National

[3] 12 CFR 226.4(c)(3). However, the consumer is obligated to pay overdrafts and fees under terms of bank account agreements.
[4] Federal Reserve, Final Rule, Regulation DD, Docket No. R-1197, May 19, 2005, p. 2.

City, SunTrust, and Wachovia) charge a $10 flat fee to transfer the consumer's money from savings to cover an overdraft in a checking account.

CFA found that the average credit card overdraft transfer fee of $10.00 was less than half the average "courtesy" overdraft fee. Consumers also pay the credit card's interest for transferred overdrafts. Fifth Third Bank's transfer fees, including credit card transfer fees, are the steepest of the largest ten banks. Tiered fees range from $9 for one to ten transfers to a credit card during a year, $15 each for eleven to twenty times, and $20 each for over twenty transfers.

Fees to cover overdrafts from lines of credit were cheaper than overdraft loans, although some banks charged an annual fee. Lines of credit transfers averaged $5.20 per transfer and/or an average annual fee of $29.00, which would be cheaper by the second overdraft even for the average banks with annual fees. Annual interest for lines of credit are typically less than 18 percent. Consumers apply for overdraft lines of credit and receive affordable repayment schedules to pay back the loans.

Instead of enrolling the vast majority of its accountholders in one of these lower-cost options for overdraft protection, most banks permit transactions to overdraw, and then hit consumers with steep overdraft fees.

Big Banks Charge Highest Overdraft Fees

CFA's 2005 study found that over 80 percent of big bank account fine print included the permissive language used to permit overdrafts on a non-contractual basis and impose overdraft fees without notice, consent, or disclosure. Big bank overdraft loan programs include paper checks, cash withdrawals at the ATM, point of sale debit card purchases, and preauthorized debits. Bankers justify high insufficient funds and overdraft fees as a deterrent to misuse of bank accounts. However, banks that give their customers "permission" to overdraw bank accounts cannot also justify high fees to deter "misuse" by customers of banking services.

The average big bank overdraft fee in 2005 was $28.09, higher than the average bank overdraft fee rate quoted by Bankrate.com. Today, the largest ten banks charge an average fee of $33.75 for repeat overdrafts. Big bank overdraft fees range from $20 to $35.

Banks also tier fees for depositors who have accrued multiple overdrafts, making it harder for consumers to recover. Bank of America charges $20 each for the first day an overdraft occurs in a twelve month period. Each additional overdraft costs $35. Bank of America permits up to five overdraft fees in one day, ranging from $100 the first day an overdraft occurs per year to $175 per day the other 364 days of the year.[5]

---

[5] Bank of America, Regular Checking, www.bankofamerica.com/deposits/checksave/index.cfm?template=check-regular, visited June 6, 2007.

Nearly half of big banks also charge sustained overdraft fees if accounts are not brought to a positive balance within a few days. Twelve of the thirty-three banks CFA studied in 2005 charged fees averaging $5.57 per day or an additional flat fee averaging $27.50. Fifth Third Bank charges an initial $33 overdraft fee, then $6 per day the account is overdrawn starting the next day unless the overdraft is repaid within three days. US Bank charges $31 each for the first one to three overdrafts and $35 each for overdrafts exceeding three and tacks on a $7 per day fee after the account is overdrawn three days.

Available Balance Overdrafts

The latest tactic in the overdraft fee wars is for banks to charge an overdraft fee even before an account is overdrawn. When a consumer pays by debit card, the bank is notified of the transaction but funds may actually be expended from the account a few days afterwards. Wachovia charges an overdraft fees if the "available balance" is insufficient to cover the next transaction, even though funds are currently sufficient and the consumer could make a deposit in the interim that would cover all transactions.[6]

Bank of America will soon charge for prospective overdraft loans. This notice was printed on the first page of June bank statements. The notice reads:

> **Important Information regarding your debit card transactions**
>
> Effective 8/10/07, when we approve a request from a merchant to authorize a debit card transaction from your account, we may reduce the available balance in your account by the amount requested by the merchant. Your remaining available balance must be sufficient to cover checks, debits and other items that post to your account, or you may incur overdraft or returned item fees. This amends your debit card agreement with us. Questions: please call the number on your statement.

Banks Manipulate the Order of Processing to Drive Up Fee Revenue

HR 946 protects consumers from bank manipulation of deposits and withdrawals from bank accounts used to drive up the number of transactions that trigger overdraft fees. The bill prohibits banks from engaging in a pattern or practice of delaying the posting of any deposit in an account if such pattern or practice results in one or more overdrafts that trigger payment of an overdraft fee. As a result, banks should credit accountholders with deposits before processing withdrawals.

HR 946 will also stop manipulation of the order in which withdrawals are posted in order to trigger more fees. Banks decide the order in which withdrawals will be processed from accounts which has a large impact on the frequency of overdrafts and the

[6] Liz Pulliam Weston, "When Banks Turn Evil," MSN Money, viewed June 29, 2007, http://articles.moneycentral.msn.com/Banking/BetterBanking/WhenBanksTurnEvil.aspx?p...
Bank of America Account Statement Disclosure, received June, 2007, on file at CFA.

cost to consumers with low balances. A bank that pays the largest check first can cause more checks to bounce for low-balance customers and can charge a penalty fee for each one. Consumers do not know the order in which items drawn on their account will be presented to their bank and are not likely to know the order in which their bank pays items. As a result, the Federal Reserve noted in adopting Truth in Savings regulations that consumers who are aware that their account may be overdrawn are not likely to know the number of items that will bounce or the total fees they will be charged.[7]

Big Banks Use High to Low Clearing

CFA's 2005 survey of large banks found that almost half of the largest banks disclose that they process withdrawals highest to lowest, while another 24.2 percent said they reserved the right to process in any order. A recent review of the ten largest banks' websites found no change. Fifth Third Bank claims that processing the largest items first is the industry standard, used not to generate more fee revenue for the bank but to pay the largest check. One of Fifth Third Bank's customers was reportedly charged $264 for eight overdraft fees for about $50 in small transactions after the bank first cleared a $100 outstanding check.[8]

Consumers Do Not Agree with Bankers on Withdrawal Order

CFA polled consumers on their views about check clearing order in a national 1998 Opinion Research Corporation International poll. While bankers claim that consumers want banks to clear the largest transaction first, to make sure the mortgage, insurance or car payment is covered, consumers say they want banks to clear checks in the order in which the bank receives them (65 percent) or to pay the smallest checks first to minimize the number of checks that bounce (16 percent). Only 13 percent agreed with bankers that they wanted banks to "pay the largest checks first, since those may be the most important."[9]

Banks are Free to Clear Transactions in Any Order

Unless Congress adopts HR 946, banks can manipulate the order in which they process withdrawals. State law does not prohibit high to low check clearing. The Uniform Commercial Code (UCC) authorizes banks to clear withdrawals in any order the bank selects, although a few states include comments to the UCC that specifically prohibit a bank from adopting a procedure designed to maximize the number of dishonored checks in order to increase fee income. The Comptroller of the Currency issued Interpretive Letters approving high to low check clearing (i.e. largest to smallest sized check or debit) when banks have followed the OCC regulation considerations in adopting this policy. Those considerations include: the cost incurred by the bank in providing the service; the deterrence of misuse by customers of banking services; the

[7] Federal Reserve Board, Final Rule, Regulation DD, Docket No. R-1197, May 19, 2005, p. 4.
[8] "Using Your Debit Card for $3 Purchase Could Cost you $300," The Community Press, July 4, 2007.
[9] Insufficient Bank Funds Fees, OPRI Caravan Poll conducted for Consumer Federation of America, May 7, 1998.

enhancement of the competitive position of the bank in accordance with the bank's business plan and marketing strategy; and the maintenance of the safety and soundness of the institution.[10] None of the OCC's considerations are for consumer protection.

The Office of Thrift Supervision (OTS) addressed manipulation of transaction-clearing rules in the Final Guidance on Thrift Overdraft Programs issued in 2005. The OTS advised thrifts that transaction-clearing rules (including check-clearing and batch debit processing) should not be administered unfairly or manipulated to inflate fees.[11] The Guidelines issued by the other federal regulatory agencies merely urged banks and credit unions to explain the impact of their transaction clearing policies. The Interagency "Best Practices" state: "Clearly explain to consumers that transactions may not be processed in the order in which they occurred, and that the order in which transactions are received by the institution and processed can affect the total amount of overdraft fees incurred by the consumers."[12]

<u>High to Low Check Clearing with Overdraft Loans Unfair</u>

CFA and other organizations wrote to federal bank regulators in 2005, protesting the bank practice of both ordering withdrawals high to low while also covering most overdrafts. The justification banks give for clearing checks high to low is to make sure important big ticket items are paid, but that rationale can not justify this practice for banks that routinely cover overdrafts because all debits will get covered. If banks choose to pay transactions that overdraw accounts for the vast majority of customers, this is a moot argument. The only purpose for clearing the largest transactions first is to maximize the imposition of multiple overdraft fees for low balance customers.

Bank Overdraft Loans Similar to Payday Loans

Software providers who develop and market overdraft loan programs to banks originally touted their product as a bank alternative to payday loans.[13] Overdraft loans are close cousins to payday loans. Neither the bank nor the payday lender determines the borrower's ability to repay before lending money. These quick cash loans are both based on direct access to the borrower's bank account. Consumers get a cash advance from the bank by overdrawing their account by check, at the ATM, through preauthorized payments, or by making a purchase with a debit card. At the payday lender, the borrower writes a check for the amount borrowed plus the finance charge (or gives authorization to debit the bank account) which is held by the lender to secure the loan. The bank levies its overdraft fee on the account and requires payment in full within days or a few weeks. A payday loan is typically due in two weeks.

---

[10] 12 C.F.R. 7.4002(b).
[11] Office of Thrift Supervision, Guidance on Overdraft Protection Programs, February 14, 2005, p. 15.
[12] Dept. of Treasury, Joint Guidance on Overdraft Protection Programs, February 15, 2005, p. 13.
[13] Retail Financial Services Initiative, "Structuring Overdraft Privilege for Low-Income Consumers," National Community Investment Fund, May 2004 at 3.

Using its right of set-off, the bank pays itself back for the loan and its fees from the deposit made to the consumer's account. The payday lender collects payment by depositing the check on payday, collecting the finance charge in cash and renewing the loan for another pay cycle, or accepting cash to buy back the original loan check. As with payday loans, the finance charge for an overdraft loan translates to triple or quadruple digit interest rates. A $100 bank overdraft repaid in two weeks for a $35 penalty fee amounts to an annual percentage rate (APR) of 910 percent. A two-week payday loan costs from 390 to 780 percent APR. Both types of credit easily trap consumers in repeat borrowing.

Banks that Profit From Astronomical Overdraft Loan Fees Have Little Incentive to Offer Responsible Small Dollar Loans That Compete with Payday Lenders

A report by then-professor Sheila Bair for the Annie E. Casey Foundation identified the biggest impediment to low-cost payday loan alternatives as the proliferation of fee-based "bounce protection" programs. Ms Bair stated "So many banks rely on bounce protection to cover customers' overdrafts for fees ranging from $17 to $35 per overdraft that they don't want to cannibalize profits by offering customers other low-cost options."[14] Michael Stegman noted that it is easier to make money on overdraft fees than by competing with payday lenders. "As banks have become fee-based businesses, their bottom lines are better served by levying bounced-check and overdraft fees on the payday loan customer base than they would be by undercutting payday lenders with lower cost, short-term unsecured loan products."[15]

The recently-issued FDIC Guidelines for Responsible Small Dollar Loans lumped overdraft and payday loan use together in describing the demand for small dollar loans. "The widespread repeat use of fee-based overdraft programs and the growth of payday lending confirm that loans in small-dollar amounts are in strong demand." The FDIC went on to say that "Providing more reasonably priced small-dollar loans to existing customers can help institutions retain these customers and avoid the reputation risk associated with high-cost products."[16] Instead of banks charging a $35 fee for a $25 overdraft loan, the FDIC Guidelines recommend affordable small loans costing no more than 36 percent annual interest, coupled with savings options, affordable and amortizing payments, and appropriate underwriting of loans.

Consumers Trapped in Overdraft Loans can Least Afford Astronomical Fees

The burden of paying billions in overdraft and bounced check fees falls on a fraction of bank customers.[17] CFA is most concerned for consumers who have a tenuous

---

[14] Press Release, "Report Critiques Payday Loans, Encourages Role for Banks," University of Massachusetts Amherst, September 14, 2005. Sheila Bair, "Low-Cost Payday Loans: Opportunities and Obstacles," Annie E. Casey Foundation, June 2005, at 13.
[15] Michael Stegman, "Payday Lending," *The Journal of Economic Perspectives*, January 2007, at 181.
[16] FDIC, Affordable Small-Dollar Loan Guidelines, issued June 20, 2007, www.fdic.gov/news/news/press/2007/pr07052a.html. at 1.
[17] Lisa James and Peter Smith, "Survey Finds Growing Problem for Consumers," Center for Responsible Lending, April 24, 2006.

hold on mainstream banking and who do not have large balances or linked accounts to provide real overdraft protection. These young, minority and less affluent consumers are at risk of losing their bank accounts or having to close them to avoid unexpected and uncontrollable penalty fees. Once a bank customer is black-listed on CheckSystems or similar bank credit reporting services, she may not be able to open a new bank account for years.

Young Debit Card Users

Young people who are heavy users of debit cards are especially vulnerable to overdraft fees. Visa USA reports that consumers spent $459 billion using Visa consumer debit cards in 2006, up almost 12 percent from 2005. VISA's April 2007 poll found that 76 percent of consumers in the 18 to 25-year range "never leaves home without a payment card, and one-third rarely carries cash."[18] The increasing use of debit cards leads to increased overdraft fees. Bank service company Furnace, Giltner & Associates Inc. studied fifty banks with up to $25 billion in assets and determined that consumers who use their debit cards more than twenty times a year paid an average $223 in overdraft fees, compared to an average of $155 when using debit cards less than twenty times a year. Customers averaged only $40 in insufficient funds fees who did not use a debit card at all.[19] And, small dollar debit card transactions cost the same $34 overdraft fee as a $700 mortgage check.

Low to Moderate Income, Minorities Most Likely to Overdraw Frequently

CFA's 2004 national opinion poll found that 28 percent of consumers say they overdraw their bank accounts. One third of consumers who overdrew their accounts (9.3 percent of all consumers) had bounced at least three checks in the previous year. In the same poll, the consumers who stated they overdraw their accounts and are most likely to pay overdraft and bounced check fees were moderate-income consumers with household incomes of $25,000 to $50,000 (37 percent). Those 25 to 44 years of age (36 percent) and African Americans (45 percent) were most likely to have bounced checks. Twenty-two percent of the lowest income group surveyed, making less than $25,000 a year, and less educated consumers (33 percent) reported that they do not have a bank account to overdraw.

Federal Banking Agencies Fail to Protect Account Customers from Abusive Overdraft Loans

All federal bank regulators with the exception of the Office of Thrift Supervision state that overdrafts are extensions of credit. The Interagency Guidance issued by the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration states "This credit service is sometimes offered to transaction account customers as an alternative to traditional ways

[18] Jilian Mincer, "'Generation Plastic' unaware of cards' risks," The Columbus Dispatch, July 5, 2007.
[19] Katie Kuehner-Hebert, "Debit Reward Payoff: More Bounce Fees," American Banker, March 1, 2007.

of covering overdrafts…When overdrafts are paid, credit is extended."[20] Yet the Federal Reserve Board has failed to require banks to comply with Truth in Lending Act disclosure requirements when extending credit through overdrafts as all competing small loan providers must do. The Federal Reserve adopted revisions to Truth in Savings Act regulations in 2005 that treat overdraft loan fees as checking account service fees.[21] The Board of Governors suggested that overdraft loans might need to be covered by Truth in Lending Act in the future:

> The Board's adoption of final rules under Regulation DD does not preclude a future determination that TILA disclosures would also benefit consumers. The Board expressly stated in its proposal that *further consideration of the need for coverage under Reg Z may be appropriate in the future*.[22] (Emphasis added.)

Although federal bank regulatory agencies issued voluntary "best practices" for banks to follow in making overdraft loans, these guidelines do not protect consumers and do not substitute for effective legislation. Congress must step in to protect consumers from high cost overdraft loans and unfair bank practices that maximize fees.

Banks Speed Withdrawals but Not Deposits

Even consumers who carefully monitor checking account transactions have a hard time avoiding insufficient funds and overdraft fees. The flow of funds out of bank accounts has accelerated due to electronic check conversion at the cash register or lockbox. The Check Clearing for the 21st Century Act (Check 21), implemented in 2004, speeds up processing of paper checks as banks are required to accept both physical and imaged checks. As checks clear more quickly, consumers who in the past relied on "float" to make ends meet are likely to experience overdrawn accounts.

Although withdrawals operate at the speed of light, deposits do not. Check holds can cause transactions to trigger overdraft fees. Despite widespread electronic movement of money, the Federal Reserve has not shortened the deposit hold time periods first established in 1990 when paper checks were shipped from bank to bank. When banks hold deposited local checks until the permitted second business day, a paycheck drawn on a local bank and deposited on Friday afternoon can be held until Tuesday before money is available in the account to spend. Many working families cannot wait that long to buy groceries or pay the rent. Fifth-day availability for deposited non-local checks means consumers may have to wait a whole week for deposits to become available, even when the check is drawn on the bank where it is deposited. Banks can hold checks totaling $5,000 deposited in one day under the safeguards exception as long as eleven business days, making consumers wait for many insurance proceeds checks, mutual fund withdrawals, home sale proceeds and other large payments whether the deposited checks have cleared sooner.

---

[20] Joint Guidance on Overdraft Protection Programs, OCC, Federal Reserve System, FDIC, NCOA, Feb. 17, 2005, p. 4. At page 7, "When overdrafts are paid, credit is extended."
[21] Federal Reserve, Final Rule, Regulation DD, Docket No. R-1197, May 19, 2005.
[22] Federal Reserve Board, Final Rule, Regulation DD, May 2005, p. 8.

Conclusion

Congress should enact HR 946 as a strong first step to protect bank customers from abusive overdraft loans. This important legislation requires banks to get their customers' affirmative written consent to borrow money through over-drawing their accounts. Banks will have to provide Truth in Lending cost of credit disclosures to enable consumers to make well-informed decisions about the best buy for small loans. Banks will be required to warn consumers when they are about to trigger an overdraft at an ATM or when paying by debit card at point of sale terminals. Banks will not be able to charge exorbitant overdraft fees until and unless consumers affirmatively consent to the fee. This notice and consent will empower consumers to choose whether to pay the fee, to terminate the transaction, or to choose another payment method.

HR 946 also goes a long way to prohibit banks from rigging the order of processing deposits and withdrawals to maximum bounced check and overdraft fee revenue. Banks will have to process deposits before withdrawals. Banks will not be permitted to process withdrawals largest first in order to extract more fees.

CFA looks forward to working with the subcommittee on legislation to make it safe for low-balance consumers to participate in main-stream banking and to use their debit cards. Thank you for the opportunity to testify today.