Testimony before the

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

regarding

"Overdraft Protection: Fair Practices for Consumers"
July 11, 2007

Chi Chi Wu
Staff Attorney
National Consumer Law Center
77 Summer St., 10th Fl.
Boston, MA 02110
617-542-8010
cwu@nclc.org

Testimony of Chi Chi Wu, National Consumer Law Center
before the U.S. House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
regarding
"Overdraft Protection: Fair Practices for Consumers"
July 11, 2007

Chair Maloney, Ranking Member Gillmor, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding the abuses of overdraft protection products and the need for fair practices to protect consumers. We offer our testimony here on behalf of our low income clients.[1]

We also wish to thank Chair Maloney for introducing H.R. 946, the "Consumer Overdraft Protection Fair Practices Act." This bill will go a long way in addressing the abuses of overdraft loans, such as:

- Permitting overdrafts without warning when consumers use their debit cards at a point-of-sale (POS) terminal or at an automated teller machine (ATM), then imposing fees of up to $35 per transaction, when previously banks had declined such transactions without charging a fee.
- Imposing credit at astronomical annual percentage rates (APRs) while not providing any Truth in Lending Act disclosures.
- Automatically applying overdraft loan programs to all bank accounts, as a form of involuntary credit.
- Seizing hundreds of dollars in Social Security and other protected federal benefits from elderly and vulnerable consumers to pay overdraft loan fees.

I. Overdrafts: From Courtesy to Usury

Overdraft loans have evolved from an occasional bankers' practice, truly meant as an accommodation, into a high cost credit product that rakes in billions for banks every year. Prior to overdraft loans, banks traditionally returned a consumer's check if the consumer did not have sufficient funds in his/her account to cover the check. The bank would charge the consumer a non-sufficient funds (NSF) fee as a penalty, to discourage the consumer from writing checks without funds on deposit to cover them. The consumer might also be charged a second fee by the merchant.

[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by abusive overdraft loans from every part of the nation. It is from this vantage point that we supply these comments. *Truth in Lending* (5th ed. 2003 and Supp.) and *The Cost of Credit: Regulation, Preemption, and Industry Abuses* (3rd ed. 2005 and Supp.) are two of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, with assistance from Lauren Saunders.

In some cases on an ad hoc basis for their preferred customers, banks would cover a transaction that would otherwise "bounce," for which they charged an overdraft fee, usually the same amount as the NSF fee. Bank managers would make the decision on an individualized basis as to which customers' checks would bounce and which customers' checks would be covered as an overdraft. Bank managers also had the discretion to forgive overdraft fees for individual consumers.[2]

Within the last decade, however, certain banks (usually smaller institutions) began to introduce "bounce protection" or "courtesy overdraft" plans, often developed and implemented by third party vendors.[3] Bounce protection, what we call "bounce" or overdraft loans, constituted a new form of high cost credit intended to boost bank fee income. Banks advertise to consumers that they will cover overdrafts up to a set limit for accounts in good standing and will charge the bank's standard NSF fee for each overdraft. While plans vary, some common features are characteristic of these plans are:

- Consumers do not affirmatively agree to coverage; instead the bank imposes coverage to a subset of account holders as a "courtesy" or additional service feature of their account. Consumers may not even know they have this feature. If they do not want this "courtesy," they must explicitly opt out by contacting the bank.
- Banks promote the availability of overdrafts. Consumers are informed they have overdraft "limits," sometimes shown as "available" amounts when consumers access information about account balances.
- Banks impose a per transaction fee, generally the bank's standard NSF or overdraft fee which is usually a flat $20 to $35. Some banks also charge a per day or other periodic fee, such as $2 or $5 per day, until the consumer has a positive balance in her account.
- Banks deduct the amount covered by the plan plus the fee by setting off the consumer's next deposit. This is true even when the deposit is protected income, such as a Social Security deposit.
- Consumers are not given Truth in Lending disclosures regarding the cost of overdraft loans, which can be astronomical.
- Most critically, banks make overdraft loans available through payment methods other than checks, including ATM withdrawals and debit card point of sale transactions, where most consumers expect that an overdraft transaction would be denied.

The latest variation on overdraft loans are programs that do not aggressively promote the availability of overdraft limits, but do permit overdrafts by electronic methods, such as at ATM withdrawals and debit card transactions. These silent overdraft loan plans are just as deadly for a consumer's financial well being, with multiple overdraft fees in one day often being triggered by transactions of just a few dollars.

---

[2] As described in Federal Reserve Board, Supplementary Information to Proposed Rule - Truth in Savings, 69 Fed Reg. 31760 (June 7, 2004).

[3] Consumer Federation of America & National Consumer Law Center, *Bounce Protection: How Banks Turn Rubber Into Gold By Enticing Consumers to Write Bad Checks*, Jan. 27, 2003, *available at* http://www.consumerlaw.org/issues/bounce_loans/appendix.shtml.

II. Overdraft Loans are a Form of Involuntary Credit

There is no question that overdrafts loans constitute a form of credit. Overdrafts constitute credit under the Truth in Lending Act (TILA), which defines "credit" as the right to "incur debt and defer its payment." 15 U.S.C. §1602(e). When a bank permits a consumer to use the bank's funds to pay for an overdraft, and then requires the consumer to repay the bank, it is granting the right to incur a debt and defer its payment until the consumer's next deposit. Early on, the Office of Comptroller of Currency recognized that overdraft loans were credit,[4] and state regulators reached the same conclusion.[5] Also, the Joint Guidance on Overdraft Protection Programs issued by all of the banking regulators (except the Office of Thrift Supervision) acknowledged that overdrafts are credit several times, including:[6]

- the "Safety & Soundness Considerations" section, where the Guidance states "[w]hen overdrafts are paid, credit is extended" and "[o]verdraft balances should be reported on regulatory reports as loans."
- the Equal Credit Opportunity Act section, where the Guidance states that the ECOA's prohibitions against discrimination for credit transactions apply to overdraft loan programs.

Other federal regulations define overdrafts as "credit"; one example is Regulation O, which governs loans to bank insiders. 12 C.F.R. § 215.3(a)(2). Indeed, the Federal Reserve Board itself grants overdrafts on a daily basis, when banks use the Fedwire system, and the Fed considers these overdrafts to constitute credit as well.[7]

Overdraft or bounce loans are unique in that they are one of the few forms of *involuntary* credit. Banks essentially "cram" these loans on consumers, *i.e.*, they impose this form of credit on consumers who have not requested it. Consumers who do not want this "courtesy" must explicitly opt out by contacting the bank. Furthermore, some consumers may not be aware until they overdraw their account that they are accessing a high cost credit product. This is especially true in the ATM or debit card context, where transactions that would overdraw an account had previously been declined and did not incur a fee. H.R. 946 would prohibit this "cramming" of overdraft loans on consumers by requiring banks to obtain specific written consumer consent before adding this feature to a bank account.

---

[4] Daniel P. Stipano, Deputy Chief Counsel, OCC, Interpretive Letter #914, 2001 WL 1090788 (August 3, 2001)("An overdraft would be "credit," as defined by the Truth in Lending Act and Regulation Z."). The OCC has long recognized that overdrafts in general are a form of loan. Peter Liebesman, Assistant Director, Legal Advisory Services Division, Office of the Comptroller of Currency, Interpretive Letter, 1984 WL 164096 (May 22, 1984).

[5] Indiana Department of Financial Institutions, *Overdraft Protection Programs*, DFI Newsletter – Winter 2002 Edition (November 2002), at 2; Letter from Assistant Attorney General Paul Chessin, Colorado Department of Law (on behalf of the Administrator for the Uniform Consumer Credit Code), re: "Discretionary" Automatic Overdraft Privilege, Revised Letter (March 21, 2001); Iowa Consumer Credit Code, Informal Advisory # 88, *Per Diem Charge on Honored NSF Checks As A Finance Charge Under the ICCC and Iowa Common Law*, (August 12, 1999).

[6] 70 Fed. Reg. 9127 (February 24, 2005). The Office of Thrift Supervision issued its own separate Guidance. 70 Fed. Reg. 8428 (Feb. 18, 2005).

[7] Guide to the Federal Reserve's Payments System Risk Policy at 5 (May 2002), *available at* http://www.federalreserve.gov/PaymentSystems/PSR/guide.pdf.

The cramming of overdraft or bounce loans also harms consumers because banks typically do not engage in underwriting for these loans. Unlike traditional overdraft lines of credit, financial institutions do not assess the consumer's ability to repay the loan. Instead, banks ensure that these programs are profitable by charging exorbitant fees that are way in excess of the reasonable 18% APR or so periodic interest rate on traditional overdraft lines of credit. These fees provide ample income to cover losses for those who default and to provide huge profit margins. This is backwards underwriting, so common these days for abusive and high cost loan products. Banks should not be permitted to blithely making high cost loans on a wholesale basis to consumers who may or may not be able to repay. Banks should be evaluating a consumer's ability to repay and only extending overdraft credit to those who can afford the credit provided to them.

III. Unfairness of ATM/Debit Card Overdraft Loans

Intentionally permitting overdraft loans for ATM and debit card transactions is an especially egregious practice, which serves no other purpose except to rack up enormous fees for banks. ATM transactions and many debit card transactions are on-line and real time. The availability of funds is confirmed,[8] and prior to overdraft loans, transactions were declined with no fee when consumers had insufficient funds in their accounts. Thus, the decision of a bank to program its computers to permit overdrafts when there are no funds is a deliberate and unfair act on the part of the bank to permit overdrafts where none would have occurred previously, solely for the purpose of collecting additional fees.

Financial institutions defend overdraft loans by claiming they save consumers from merchant penalties, late charges, and embarrassment. These defenses are completely inapplicable to ATM and many debit transactions. Consumers do not incur retailer fees for declined transactions in the context of a debit card. With ATM cards, the transaction is to provide cash directly to the consumer – there is no merchant or other third party involved.

Like ATM withdrawals, PIN-based debit card transactions are also on-line and real-time.[9] With "signature" debit card transactions through the MasterCard or VISA networks, most merchants will check funds availability from the bank, which has the ability to inform the merchant that a transaction will overdraw the account. In that situation, allowing overdrafts instead of declining the transaction is just as much of an unfair practice as allowing them in the PIN-based context.

Because debit card transactions are at the point-of-sale, if the transaction is declined or at least the consumers warned that they are about to overdraw their account, the consumer often has the ability to undo the transaction (i.e. put the merchandise back on the shelf) or use an alternative form of payment without incurring a hefty penalty. While there is a third party involved and perhaps a chance of slight embarrassment if a transaction is declined, that risk is preferable to a hefty $20 to $35 fee per each transaction. Moreover, the risk of embarrassment is overstated. As many travelers can attest, banks increasingly freeze credit cards if they have a

---

[8] *See* In re Visa Check/Mastermoney Antitrust Litigation, 192 F.R.D. 68 (E.D.N.Y. 2000).
[9] *Id*.

suspicion that purchases have been unusual. It is not at all uncommon to have a transaction denied and implies little about the consumer.

Banks also often defend permitting overdraft loans by ATM and debit card by turning around and blaming the consumer. They argue that the consumer has failed to keep track of his or her transactions, and lacks "personal responsibility."[10] These arguments are specious, because it is the bank itself that programmed its systems to permit and indeed encourage these so-called transgressions. The bank could easily re-program its computers to decline overdrawn ATM and debit card transactions without imposing a fee, like they used to.[11] The banks' actions are akin to putting a trip wire in front of a person, then blaming the person when they trip. While the person may not have been careful in watching the ground, the bank bears responsibility for laying down the trip wire in the first place.

Furthermore, the Federal Reserve Board recently made it even harder for consumers to avoid overdraft loans by eliminating the requirement to provide receipts for debit card transactions under $15.[12] By eliminating the requirement for receipts under $15, the Fed has made it harder for people to know what their balance is by encouraging small dollar transactions without the receipts that consumers can take home and use to balance their checkbooks. The lack of receipts will make it that much easier for consumers to accidentally overdraw their accounts. Of course, the banks supported this new rule,[13] despite also blaming consumers for not keeping track of all of their banking transactions.

The availability of overdraft or bounce loans through ATM and debit card transactions is simply unfair and outrageous. It is one reason for the tremendous growth in fee income from overdrafts. In fact, Robert Giltner of Sheshunoff Management Services, a third party vendor that provides overdraft loan consulting services, explicitly admitted that "electronic transactions are part of the reason for the doubling in overdraft volume in the past 10 years. Mr. Giltner was also quoted as beings optimistic that fees will continue to climb because "[a]s velocity increases, as things clear faster, ... customers are not able to respond as fast on the deposit side as they are on the transaction side."[14]

The practice of intentionally permitting ATM and debit card overdrafts should be banned. At a minimum, banks must be required, for each transaction, to obtain the active and knowing consent of consumers and disclose the fee before processing an overdrawn transaction. The requirement in H.R. 946 that banks give the consumer a warning and obtain affirmative

---

[10] Randall Pinkston, *Overdraft Protection A Trap?*, CBS News, (quoting an American Bankers spokeswoman Nessa Feddis stating "'People do have a responsibility to keep track of their transactions.'), April 11, 2005, *available at* http://www.cbsnews.com/stories/2005/04/11/eveningnews/main687348.shtml.

[11] There are occasional instances in which an overdraft does occur accidentally. However, the abusive practice occurs when banks deliberately and intentionally programs their computers to permit overdrafts even when the bank's own records would show that the transaction would overdraw the account.

[12] Federal Reserve Board, Final Rule - Electronic Funds Transfers, 72 Fed. Reg. 36589 (July 5, 2007).

[13] Nessa E. Feddis, American Bankers Association, Comment re: Electronic Fund Transfer Act Regulation E Proposed Rulemaking, Docket No. R-1270, February 2, 2007.

[14] Bill Stoneman, *Sizing NSF-Related Fees*, BAI Banking Strategies, Volume LXXXI - No. 1, January/February 2005.

agreement to ATM and debit card transactions that overdraw an account is essential to fulfilling that purpose.

$245 In Overdraft Fees For Less Than $14 In Purchases

G.C.'s case is the most typical overdraft loan complaint that consumer advocates receive. G.C. is a college student attending a Boston area university. Using his Bank of America debit card, he spent $5.28 at a local coffeeshop and $8.26 for lunch from the campus convenience store. For less than $14 in goods, he was charged $245 in overdraft fees. The bank manager of the on-campus branch of Bank of America refused to waive any of the fees. After escalating the dispute, the bank manager's supervisor agreed to waive all but $70 in fees - still over five times what the goods were worth.

An Unwelcome New Year's Surprise

Oftentimes, overdraft loans last only a day or so, or even just a few hours. They are artificially created when banks process debits (checks and withdrawals) to an account before processing credits. For example, C.S. was charged $21 apiece for two overdraft loans that literally lasted a few hours. On December 31 -- New Year's Eve -- C.S. made two separate ATM withdrawals, one for $20 and another for $40. On that very same day, C.S.'s payroll check in the amount of $1,578 was directly deposited into her account. Washington Mutual posted the payroll deposit sometime after CS had withdrawn funds from the ATM machines. Thus, C.S. was charged fees of $42 in overdraft fees for loans of $60 that were repaid the same day – resulting in an effective APR of over 25,000%.[15]

IV. The Federal Reserve Board's Failure to Require TILA Disclosures for Overdraft Loans

As discussed above, overdrafts are clearly "credit" under the federal Truth in Lending Act (TILA). The reason that overdrafts loan programs do not require TILA disclosures is an exemption created by the Fed. Regulation Z, which implements TILA, excludes overdraft fees from the definition of a "finance charge." This exemption, written in 1969, was originally designed to exclude from TILA coverage the traditional banker's courtesy of occasionally paying overdrafts on an ad-hoc basis as a customer accommodation.[16] However, banks exploited this

[15] C.S. is one of the plaintiffs in In re Washington Mutual Overdraft Protection Litigation, 2006 WL 2570957 (9th Cir. Sep. 7, 2006). NCLC is co-counsel in that case.
[16] Federal Reserve Board, Supplementary Information to Proposed Rule - Truth in Savings, 69 Fed Reg. 31760 (June 7, 2004).

exemption as a gaping loophole, creating and promoting predatory credit programs while avoiding TILA's disclosure requirements.

In general, the fees for overdraft loans translate into APRs that are triple digit or even higher. For example, consider a $100 overdraft loan that is repaid in two weeks, for which the bank charges a $20 fee. A comparable payday loan would have to disclose an APR of 520%. Furthermore, most overdraft loans are paid much more quickly than two weeks - sometimes in a matter of days or hours - and sometimes the loan is only for a few dollars.

When the Fed first raised the possibility of TILA coverage for overdraft loans, consumer groups had vigorously supported the idea. Instead, the Fed chose to regulate overdraft loans under the less effective Truth in Savings Act (TISA), simply requiring disclosure of the fee and a running tally.[17] TISA disclosures do not reduce or eliminate the most serious abuses of overdraft loans.

The failure of the Board to require TILA disclosures for overdraft loans undermines the statute's key purpose of strengthening "competition among the various financial institutions and other firms engaged in the extension of consumer credit." 15 U.S.C. § 1601(a). Without the uniform disclosure of the APR required by TILA, consumers have no way to compare overdraft loans to the cost of other similar credit transactions, such as payday loans, pawnbroker loans, auto title loans, overdraft lines of credit, and credit card cash advances. Under the Board's scheme, the disclosed APR for a typical payday loan is 391% to 443%[18] but for an overdraft loan program the lender may disclose under TISA that the account is actually earning interest! Without apples to apples comparisons, there is no competition to reduce the cost of any of these products.

Furthermore, ATM and debit cards that access overdraft loans are essentially super-expensive credit cards, as they fit within TILA's definition of a "card … existing for the purpose of obtaining money, property, labor, or services on credit." 15 U.S.C. § 1602(k). Debit cards that access overdraft loans obtain "credit" by paying merchants with the bank's money (at a steep fee), and are often even branded with a VISA or MasterCard logo. As such, they should be covered by TILA's special credit card protections, including the prohibition against a bank repaying credit card debt by taking money out of the consumer's bank account using an "offset." 15 U.S.C. § 1666h.

In addition to TISA disclosures, the federal banking regulators issued a Joint Guidance setting forth "best practices" for overdraft loans.[19] The Joint Guidance sets rules for the treatment of overdraft loans for safety and soundness considerations, requiring that they be reported as loans on call reports and be charged off as uncollectible after 60 days. The Joint Guidance also sets forth best practices for overdraft loans, some of which are helpful, but do not have the mandatory force of regulation and do not address the issue of failure to provide TILA disclosures. In particular, the Joint Guidance actually does recommend that banks alert

[17] 70 Fed. Reg. 29,582 (May 24, 2005).
[18] Keith Ernst, et al., *Quantifying the Economic Cost of Predatory Payday Lending*, Center for Responsible Lending (December 18, 2003), at 3.
[19] 70 Fed. Reg. 9127 (February 24, 2005).

consumers whenever a transaction will trigger overdraft fees, and permit the consumer to cancel the transaction; however, that recommendation is only a best practice and not an enforceable requirement.

If overdraft loans are to be permitted at all, banks must be required to make TILA disclosures. H.R. 946 fulfills that need, closing a gaping loophole that the Fed has refused to repair. It requires that banks give TILA disclosures for overdraft loans, ensuring that consumers understand the exorbitant costs of using overdrafts as a source of credit.

Furthermore, TILA disclosures for overdraft loans must be required to include an "effective" or fee-inclusive APR. The Fed has recently issued a new proposal for credit card disclosures and other open end credit, which includes overdraft loans. One of the Fed's alternative proposals is to eliminate the effective APR or "fee inclusive APR." If selected, this proposal will mean that the sky high APRs for overdraft loans will never be disclosed. That is because the "periodic APR" for these loans is 0% - it's the flat fee for the overdraft that makes this form of lending so expensive. Only an effective or fee-inclusive APR includes this type of flat fee in its calculation. Conversely, omitting a fee-inclusive APR will encourage creditors to continue to develop deceptive high cost forms of credit that consumers cannot easily compare.

Finally, the Fed's decision to eliminate the requirement for receipts for debit card purchases under $15 shows a pattern of decisions that fail to protect consumers by making it harder for consumers to keep track of withdrawals from their bank accounts.

V. The Government's Role - Overdraft Loans Harm Social Security & Federal Benefits Recipients

The federal government bears a special obligation to one group of consumers particularly impacted by overdraft loans: recipients of federal benefits, such as Social Security, SSI and veteran's benefits. Since the passage of the law known as "EFT 99" (31 U.S.C. § 3332) by Congress in 1996, federal agencies have launched a massive effort to ensure that all federal payments are electronically deposited into recipients' bank accounts rather than mailed. The express goal was to save government money, and apparently paper check volume has dropped by hundreds of millions, resulting in cost savings of over $240 million a year. However, the federal government's efforts to save money have directly resulted in encouraging overdraft loans. "Free" checking accounts, used by many benefits recipients, are often combined with overdraft loan features, resulting in banks charging hefty overdraft fees charged to low-balance accounts. One of the primary reasons that most unbanked recipients refused bank accounts in the past was fear of fees resulting from bounced checks. Yet now, - as encouraged by the U.S. Treasury Department - these low income recipients are paying high overdraft loan fees in order to save the government money.

The situation for federal benefits recipients is especially egregious because overdraft loans are one of the very few types of debt for which creditors can seize Social Security and other protected federal benefits. For example, the Social Security Anti-Assignment Act protects these funds, intended to keep older Americans out of poverty and provide subsistence income, from being garnished or seized by creditors. 42 U.S.C. § 407(a). The only creditors that can touch Social Security are the U.S. Government itself -- and banks that take or "offset" Social Security funds to pay overdraft loans and fees.[20]

Overdraft Loans Leave a Widow Homeless

B.B. was a physically disabled woman with severe depression after the death of her husband of 35 years. Her sole income was $898 per month in Social Security widow and disability benefits, which were direct deposited to her bank account at Washington Mutual. B.B.'s bank account had an overdraft loan limit of $1,000. While B.B. was in the hospital for hip replacement surgery after a fall, her daughter used B.B.'s debit card as well as writing forged checks on B.B.'s account. Washington Mutual took one and a half months worth of B.B.'s Social Security benefits to pay for the overdrafts, including $450 in overdraft fees. As a result, B.B. was left with no money to pay her rent or food. She was evicted from her apartment and forced to rely on a neighbor for food.[21]

VI. A Generation of Alienated Account Holders

Eventually, overdraft loans will create a generation of consumers that are distrustful of banks and the banking system. This is especially true for ATM and debit card overdraft loans, given that young people (especially college-educated consumers) are the biggest users of debit cards.[22] In fact, when consumer advocates receive complaints about overdraft loans, the single most common scenario is a young college student or young worker who has been hit with hundreds of dollars in overdraft fees for 3 or 4 transactions that amount to a few dollars. These young consumers will always remember that kind of outrageous abusive conduct as one of their first banking experiences.

Overdraft loans on ATM and debit cards generate an ill will toward banks that ultimately serves the bank no good either. For example, recent research shows banks that have the most satisfied customers are more profitable. But according to an American Banker article, "[t]oo often, bankers end up trying to compensate for flat balances with hidden charges, penalties, and other lucrative - but insidious - sources of revenue from fees that alienate account holders."[23]

---

[20] Lopez v. Washington Mutual, 302 F.3d 900, *amended at*, 311 F.3d 928 (9th Cir.2002).
[21] B.B. was one of the plaintiffs in Lopez v. Washington Mutual. This summary is based on court documents supplied to the author.
[22] Amanda Swift King and John T. King, *The Decision Between Debit and Credit*, Financial Services Review, Vol. 14, Issue 1, April 1, 2005 (noting that debit card users are younger and tend to have a college degree).
[23] Julie Coffma and Doug Stotz, *Viewpoint: How Some Banks Turn Clients Into Advocates*, American Banker Online, May 11, 2007 (describing Bain & Co. research that found banks who have enthusiastic customers post higher rates of deposit growth).

Involuntary and unfair overdraft loans that sock consumers for hundreds of dollars for fees for a few dollars worth of purchases are a surefire way to alienate a customer.

VII. Conclusion

Overdraft loans are no more than predatory loans crammed onto consumer bank accounts. They are often unwanted loans, especially when provided through ATM and debit cards, with the fees literally costing consumers several times more than the overdraft itself and translating into astronomical APRs. Yet of all the types of high cost credit - payday loans, auto title pawns, refund anticipation loans, credit card cash advances - this is the only type of loan that does not require TILA disclosures.

Congress should act where the Fed has failed to protect consumers. H.R. 946 would provide many of the protections necessary to prevent the abuses of overdraft loans, including:

- Requiring specific written consumer consent before imposing an overdraft loan program on a consumer's bank account.
- Require TILA disclosures for overdraft loans.
- Require banks to warn the customer when an ATM or debit card transaction will overdraw an account and require the customer's affirmative consent to the fee.
- Prohibit banks from manipulating the order of check clearing or delaying the posting of deposits to increase customers' overdraft loan fees.

Thank you for the opportunity to testify today.