

# “Free Checking” is not Free



## A Closer Look at Overdraft Fees:

How California’s Largest Banks  
Profit from Low-Balance Account Holders

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#### Executive Summary

California’s banks are reaping huge profits from their low-balance account holders. Thus the “Free Checking” accounts banks advertise are not really free. Most customers use their checking accounts to make purchases with their debit card and to withdraw money at an ATM. Simple financial transactions such as writing a check, withdrawing money at the ATM or purchasing something with a debit card come with complicated and often unexplained policies and fees. Banks’ free checking accounts create confusion for their customers. Banks will regularly cover overdrafts for the majority of their customers, turning ATM and debit cards into expensive short-term loans. Banks rely on low-balance account holders to overdraw their accounts and pay costly overdraft fees on a regular basis.

The California Reinvestment Coalition (CRC) conducted a survey asking seven of California’s largest banks to outline their overdraft practices. Bank of America, Bank of the West, Citibank, Union Bank of California, U.S. Bank, Washington Mutual, and Wells Fargo participated in the survey. The survey confirmed that all banks charge their customers hefty fees when they overdraw their accounts. Banks claim that they may or may not cover overdrafts for their customers. Customers, though, know that their banks will cover their overdrafts whether there is money in their accounts or not.

Consumers that have a bank account are part of the financial mainstream. They have a place to safely keep their money and to conduct basic financial transactions. A large segment of the population, however, does not have bank accounts. Up to 20 percent of the population is “un-banked.” Eighty percent of families without checking accounts have annual incomes under \$25,000. Twenty-five percent of people of color do not have a checking account, and less than half of all Latino households do not own a credit card or use a checking account.

Community organizations and agencies want their clients to open bank accounts as part of a financial education curriculum and asset building strategy. However the “free” checking accounts that most banks offer can lead customers down a path of excessive overdraft fees. Those without bank accounts say high fees are one of the top reasons they do not have an account.

Banks are not clear about the multiple fees a consumer can incur. When opening an account the customer is handed a “Schedule of Fees” dense with words printed in small font. This document, riddled with confusing bank jargon, is where banks disclose their various policies for charging customers fees. Because of the unreadable nature of this document, most customers do not know that their bank will not process their debits and checks chronologically, or that their bank may place a timed hold on their deposits, making their money inaccessible for several days.

Banks make it difficult for their customers to know their account balances. Most banks clear checks and debits from the highest amount to the lowest amount. Merchants place holds on debit card purchases for a higher amount than the actual purchase price. These practices can mislead and confuse account holders. Even for those customers that record every transaction, their records may show that there is more money in their account than there actually is.

The following points summarize CRC's overdraft survey:

- Five of seven banks increase their fees with each overdraft. They will start with a low “teaser” fee which can ascend rapidly for each subsequent overdraft. Bank of America's fee starts at \$20 for the first time a customer overdraws in a 12 month period. After that the customer must pay a \$35 fee for all subsequent overdrafts. Overall, the banks fees range from \$30 to \$35 per overdraft.
- Six of the seven banks limit the number of overdraft fees charged per day. U.S. Bank, for example, will charge their customers up to \$408 in overdraft fees in just one day.
- Only three of the seven banks will alert their account holders at their own ATMs if a pending transaction will overdraw the account.
- All banks engage in “high to low” debit clearing, meaning that they will process debits or checks from the highest amount to the lowest amount. They engage in this practice either automatically or on a discretionary basis. “High to low” debit clearing creates more overdrawn accounts and thus increases fees for the banks.
- All banks have complicated policies regarding “hold” times on deposited checks and even cash. Federal law allows banks to place a hold on their customers' deposits for up to eleven days. Banks realize that the longer the hold on the deposit, the more likely the customer is to overdraw his or her account.
- Three out of seven banks will charge their customers an additional daily fee of up to \$7 for each day that an account has a negative balance.

Consumer advocates have widely publicized that banks reap huge profits from overdraft fees. According to estimates from the Center for Responsible Lending, banks make approximately \$17.5 billion nationally in overdraft fees each year.<sup>1</sup> Banks profit from overdraft fees and thus heavily market their “free” checking accounts. The banking industry lobbies congress and the federal banking regulators so that overdraft legislation is not passed and that new regulations are in line with their existing policies. The banks assert that the covering of overdrafts is a desired service for their customers. In reality, banks have converted their free checking accounts into an expensive short-term loan for their low-balance account holders.

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<sup>1</sup> Eric Halpern and Peter Smith, “Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans,” Center for Responsible Lending, July 11, 2007.

## Introduction

When banks first introduced debit cards, they were presented as a better option to a credit card. Customers could use their debit card just like a credit card, but instead of buying on credit the purchase or withdrawal amount would automatically be deducted from their account. Customers were not buying products on credit but were using real time funds from their accounts.

Banks now allow their customers to use their ATM/debit cards to make purchases and withdraw from their ATMs regardless of whether there are funds in customers' accounts or not. Banks allow these transactions to proceed and then assess an expensive fee ranging anywhere from \$30 to \$35 per overdraft. Banks claim that they cover overdrafts so that their customers avoid additional fees when they bounce a check or are not embarrassed when a debit card purchase will overdraw their account.

Banks are not interested in protecting their customers from embarrassment or additional fees. Rather they have discovered that they can increase profits dramatically by transforming their "free" checking accounts, ATM withdrawals and debit card purchases into unregulated high-cost-short-term loans. In most cases, banks do not alert their customers at their own ATMs if they are going to overdraw their accounts. Banks allow merchants to proceed with debit card purchases regardless of whether the customer has sufficient funds in his or her account. Bank customers do not sign up or opt-in to have their bank regularly cover their overdrafts. Instead banks cover overdrafts with no disclosure or notice to their customers. The federal banking regulators agree with the banks that the covering of overdrafts is a service and not a loan. Because of this banks do not have to comply with the Truth in Lending Act (TILA) and do not have to calculate and disclose the annual percentage rate (APR) for these unofficial loans.

To increase their ability to collect overdraft fees, many banks will process the highest debit and/or check for any particular day first. Banks claim that the largest debit or check is often for a rent or mortgage payment. For the unsuspecting consumer that keeps track of their checks and debits chronologically, cashing their largest check first may cause the smaller checks that were written before to bounce and incur overdraft fees for each transaction. Banks do not guarantee when a customer's deposit will be made available and often place holds on deposits that can last as long as eleven days. Holds are also placed on debit card transactions. Customers without daily access to the internet and on-line banking are often not of how long a hold will be placed on their deposit or their debit card purchases. Once again customers are left not knowing their account balances and as a result are more susceptible to overdrawing their account.

## Overdraft Practices Amongst California's Largest Banks

CRC's survey asked seven of California's largest banks basic questions about their overdraft fees and practices. CRC also conducted blind mystery shopping: staff visited bank branches and queried bank branch staff about their free checking accounts and general overdraft practices. Finally staff reviewed the banks' small font disclosure statements on their schedule of fees.

CRC found that banks' overdraft policies are confusing and misleading. In some cases, banks' community development officers responded incorrectly to the survey questions when compared to

verbal responses from the banks' tellers or to the banks' written schedule of fees. Banks word their overdraft, debit clearing, and deposit hold policies in such a way that does not commit them to doing anything one way or the other. Their lawyers are careful to assure that banks are not held responsible, and are free from any risk of liability.

Whether it's Bank of America or Washington Mutual, customers have similar stories recounting their frustrations with their banks' free checking accounts. In many cases, customers are paying excessive fees for a bank product that is advertised as free and beneficial for the customer.

*"I have been charged around \$1,000 in late fees and over draft charges. They are misleading to the customer about their free checking account. They never provide them with facts that free checking, isn't free as they say."*<sup>2</sup>

-Erica of Tujanga, California



*"Over Christmas week, [Bank of America] drained my account completely, charging me \$35 for every allegedly insufficient fund charge. I was charged the maximum fee every day for more than a week. Recently they took over \$100 for checks I didn't order, and now they're taking \$80 in fees because they held my cash deposit an extra day and claim all my purchases after the deposit were paid against insufficient funds actions."*<sup>3</sup>

-TJ from Hollywood, California

Banks employ a complicated rate structure for their overdraft fees. Customers are offered a low "teaser" fee for their first overdraft of a twelve-month period that increases every time after that. Bank of America charges their customers a \$20 fee for their first overdraft. This fee then shoots up to \$35 per overdraft thereafter. Wells Fargo also offers a lower rate of \$23 for the first overdraft that increases thereafter to \$34 per overdraft. Bank of the West, Union Bank and U.S. Bank offer a lower rate for the first two times within a twelve-month period. Citibank and Washington Mutual have a flat \$30 fee per overdraft.

Highest Layered Overdraft Fee	
Bank of America	\$35
Bank of the West	\$30
Citibank	\$30
Union Bank	\$34
US Bank	\$34
Washington Mutual	\$30
Wells Fargo	\$34

*Of the highest rates, the average overdraft fee is \$32. Washington Mutual recently increased its overdraft fee from \$27 to \$30. Given that there are no regulations to control the maximum amount a bank can assess, these fees will likely continue to increase.*

<sup>2</sup> [http://www.consumeraffairs.com/finance/washington\\_mutual\\_bank.html](http://www.consumeraffairs.com/finance/washington_mutual_bank.html) (11/17/05)

<sup>3</sup> <http://www.consumeraffairs.com/finance/bofa.html> (03/09/07)

Daily Overdraft Limit	
Bank of America	\$175
Bank of the West	\$170
Citibank	No Limit
Union Bank	\$170
US Bank	\$408
Washington Mutual	\$150
Wells Fargo	\$340

*Banks allow their customers to overdraw their accounts multiple times in one day. A customer making small purchases and withdrawals using their ATM/debit card could be charged hundreds of dollars in one day if there is not enough money in his or her account.*

In the case of U.S. Bank, a customer that overdraws his or her account the allowable 12 times would owe the bank \$408 in one day. For a Citibank customer there is no limit on overdraft fees. While Citibank claims to prohibit its customers from overdrawing their account at an ATM, it is unimaginable to consider the amount of fees one of their customers could rack up using his or her debit card for multiple debit card purchases. For a Wells Fargo customer, ten small purchases in one day could cost \$340 in fees.

ATM Alert	
Bank of America	No
Bank of the West	Yes
Citibank	Yes
Union Bank	Yes
US Bank	No
Washington Mutual	No
Wells Fargo	Yes

*The banking industry claims that they are technologically unable to alert their customers at their own ATMs if a withdrawal will result in an overdraft. Nessa Feddis of the American Bankers Association testified before the Committee on Financial Services that: “Current technology limitations make real time notifications of overdrafts impossible and would raise the costs . . . Transmitting the required notice, the amount of the fee, the customers’ response, and the final authorization would necessitate prohibitive technical changes.”<sup>1</sup>*

U.S. Bank and Washington Mutual assert that it is the customer’s responsibility to know his or her account balance.<sup>4</sup> Both banks recommend that their customers check their account balances at the banks’ ATM before withdrawing money. While this is what they tell their customers, they will not alert them if their withdrawal is going to create an overdraft. Bank of the West, Wells Fargo and Union Bank claim that their customers are alerted at an in-system ATM if the pending withdrawal creates an overdraft. Citibank alleges that their ATMs will only allow their customers to withdraw available funds.

Even if a customer checks their available balance at an ATM before proceeding with a withdrawal, the amount displayed may not be completely accurate. In WAMU’s “account disclosure & regulations” document, the bank acknowledges that they may or may not use the available balance when processing their customers’ transactions. Bank of America recently started to subtract a debit card’s purchase amount from an account’s available balance even though the transaction has not cleared and the funds are still available. Many debit card purchases may also carry an “active

<sup>4</sup> Washington Mutual posts an article on its website advising its customers to keep track of their checks, transactions and deposits so that they always know their available balance: “Avoid Bank Fees: Follow these steps to avoid overdraft and Non-Sufficient Funds (NSF) fees.”  
[http://www.wamu.com/personal/learn\\_plan/browsebytopic/banking\\_basics/AvoidFeesI.htm](http://www.wamu.com/personal/learn_plan/browsebytopic/banking_basics/AvoidFeesI.htm)

hold”. An active hold on a debit card purchase often occurs at a restaurant or when a customer pays for gas at the pump. Merchants will increase the purchase amount and list this increased amount as an “active hold” on the account. Sometimes the active hold expires before the purchase clears the account. Customers may not realize this and think they have more money in their account. Confusing policies like these can cause customers to inadvertently overdraw their account.

*“Washington Mutual keeps ripping me off with all of these bogus \$27 fees saying that I’m overdrawn on my checking account. I’ve kept a close eye on everything I do with my money and where I put it and how I record it in my checkbook.”<sup>5</sup>*

-Robert of Lawndale, California

Banks will often process the highest debit or check first, depleting the customer’s account. The customer is then put in a situation where he or she is more likely to incur overdraft fees for all their other transactions. Customers who keep track of their debits, checks and ATM withdrawals chronologically cannot predict in what order the bank will clear these same charges.

High to Low Debit Clearing	
Bank of America	Yes
Bank of the West	Yes
Citibank	Yes
Union Bank	Maybe
US Bank	Maybe
Washington Mutual	Maybe
Wells Fargo	Yes

*“[Bank of America] posted a large check that created an overdraft before posting other smaller items that showed pending before the check came in. By doing this the maximum overdraft fee will be assessed. They post the largest debit transaction first even if it did not come in first.”<sup>1</sup>*

-Ervin and Alicia of Alta Loma, California

WAMU’s schedule of fees states that cleared checks and debits “may *not* be posted in the order in which [the customer] initiated them”. WAMU’s legal department reviewed CRC’s survey and stated that the bank does “clear in date order, but this sentence allows [WAMU] to change to a different order if we wanted to.” WAMU then responded that they do not clear checks and other items from “high to low”. Contrary to WAMU’s legal department’s interpretation, CRC considers this bank’s debit and check clearing process to be “discretionary”. In other words, WAMU will probably clear a customer’s checks and debits chronologically, but they do not guarantee how debits and checks are cleared.

*“The American Bankers Association (ABA) justifies paying the largest checks first on the basis that those checks are the most important. However, banks today routinely pay all overdrafts. The only difference is that posting the highest-value payment first will increase the likelihood of the account balance going into the red, thus giving banks increased opportunities to charge overdraft fees for each of the smaller transactions that follow.”<sup>6</sup>*

-Representative Carolyn Maloney (D-NY), sponsor of the Consumer Overdraft Protection Fair Practices Act

<sup>5</sup> [http://www.consumeraffairs.com/finance/washington\\_mutual\\_bank.htm](http://www.consumeraffairs.com/finance/washington_mutual_bank.htm) (03/03/07)

<sup>6</sup> Representative Maloney submitted her "dear colleague" letter to members of the House and Financial Services Committee to seek support for the Consumer Overdraft Protection Fair Practices Act.

Banks further confuse customers by not making their deposits immediately available. This practice contrasts greatly to banks' practices of automatically clearing their customers' checks and debits<sup>7</sup>. Most customers have probably never heard of a law known as "Check 21". Account holders were used to having a "float" on their checks. In other words, a customer would write a check and know that it would not clear the bank for several days. With Check 21, checks are electronically transmitted to the bank and immediately cleared. Banks, though, continue to place holds on their customer's deposits.

<b>Holds on Deposits</b>	
<b>Bank of America</b>	Next business day
<b>Bank of the West</b>	Next business day
<b>Citibank</b>	Sometimes
<b>Union Bank</b>	Next business day
<b>US Bank</b>	Next business day
<b>Washington Mutual</b>	Sometimes
<b>Wells Fargo</b>	Sometimes

Deposited checks are generally not available until the next business day. Washington Mutual admits to the longest maximum check hold of 11 days.

The federal banking regulators allow banks to place holds on their customers' deposits for up to eleven business days.<sup>8</sup> If a customer has a history of overdrafts, banks are allowed to impose the maximum number of days for a hold. A hold of eleven business days equals sixteen calendar days. Banks' practice of placing holds on their customers' deposits is clearly a disservice. Bank of America, Bank of the West, and Union Bank claim that their customers' funds are available the next business day. U.S. Bank will make the first \$100 available on the day of the deposit. WAMU was the only bank that responded that it might place a hold on a deposit for up to eleven days. Wells Fargo was the only bank that claims to make "on us" checks and government checks available on the day they are deposited. Customers cannot predict the length of time on these holds. For those customers living "paycheck to paycheck", they may be overdrawing their accounts through no fault of their own.

*"We have had many problems with our checking account with Washington Mutual over the five years we have had it. This time, we are done with them. I deposited three separate local checks into the ATM at our branch. However, I could not withdraw any cash. I waited over the weekend, thinking it was because it was a Friday and it had to be ledgered. When I tried again Monday, I still could not withdraw any funds. I called the bank and was told that because we deposited them in to the ATM, there would be a hold. I deposited them on the 10<sup>th</sup> – but the money would not be available until the 21<sup>st</sup>. Now in the past we had taken checks into the bank to deposit them and they were also held. They informed us that if we had put them into the ATM we could have gotten our cash immediately. WHAT A CROCK. Meanwhile, I had written checks to pay bills, and they have all been returned and we are being charged \$27 for each returned check – 9 total to date. Now, one of the checks is a payroll check for my husband, from the Pleasanton Police Department. The second check was also a local company paycheck. The third was also a local company personal check. Totally ridiculous to hold these checks for two weeks. I have no money for bills, groceries, for gas for two weeks. I have been charged almost \$200 in check fees, on top of the numerous fees I will receive from the places I wrote checks to."<sup>1</sup>*

-Michele of Pleasanton, CA

On top of the daily overdraft fees, some banks will also impose a daily fee for each day that their customers' accounts are overdrawn.

<b>Negative Balance Fee</b>	
<b>Bank of America</b>	No
<b>Bank of the West</b>	No
<b>Citibank</b>	No
<b>Union Bank</b>	\$6/day
<b>US Bank</b>	\$7/day
<b>Washington Mutual</b>	No
<b>Wells Fargo</b>	\$5/day

Many customers are probably unaware that their bank will charge them a daily fee for having a negative account balance. Union Bank, U.S. Bank and Wells Fargo assess a daily fee that starts on the fourth day that the account is in the red.

For many customers, overdraft and negative balance fees can accumulate to astronomical amounts. In 2005, the Consumer Federation of America collected reports estimating the number of times a year a customer would overdraw his or her account. The fee estimates for overdrawn accounts ranged from \$99 in annual fees up to \$3,254.<sup>9</sup> Once customers have incurred a level of debt that they are unable to repay, their only option might be to just close the account. Closing an account under these circumstances will automatically place a customer's name on a database known as ChexSystems. Banks use ChexSystems to share information about their customers. Former account holders listed on ChexSystems because of multiple overdrafts, fraud or providing false information to the bank are barred for opening an account at another bank for up to seven years.<sup>10</sup>

Banks recognize that the more their customers use their debit cards, the higher the probability for banks to assess unscrupulous fees. Banks encourage debit card usage by offering reward programs to their customers. Bank of America has a program known as "Keep the Change". The bank will round up every debit card purchase to the nearest dollar and transfer the difference from a customer's checking to his or her savings. If a customer's account is in the "red", they will not receive the incentive. Citibank and Wells Fargo both offer points to their customers for using their debit cards to make purchases. U.S. Bank and Washington Mutual offer small cash rewards to their customers for their debit card usage.

<b>Debit Card Incentive</b>	
<b>Bank of America</b>	<b>Yes</b>
<b>Bank of the West</b>	No
<b>Citibank</b>	<b>Yes</b>
<b>Union Bank</b>	No
<b>US Bank</b>	<b>Yes</b>
<b>Washington Mutual</b>	<b>Yes</b>
<b>Wells Fargo</b>	<b>Yes</b>

Debit cards are becoming more and more like credit cards. Both debit cards and credit cards offer points and cash awards which encourage customers to use their cards more and more.

<sup>9</sup> Jean Ann Fox and Patrick Woodall, "Overdrawn: Consumers Face Hidden Overdraft Charges from Nation's Largest Banks", Consumer Federation of America, June 9, 2005. p. 20.

<sup>10</sup> Each bank has a different policy when accepting customers who have been listed on ChexSystems.

Checking accounts are supposed to be safe places in which one can have their money safely deposited. ATM cards were designed for customers to have safe and convenient access to the cash in their accounts. Debit cards were intended for consumers not wanting to make purchases on credit. Checking and deposit accounts for the majority of U.S. residents are a necessary part of life. Banks should not penalize their low-balance account holders. Excessive holds on checks and “high to low” debit clearing are bank practices that make it too easy for low-balance customers to overdraw their accounts.

### Non-Interest Income

A large percentage of a bank’s non-interest income is derived from overdraft fees. The Center for Responsible Lending estimates that overdraft and bounce protection fees make up 60 percent of banks’ non-interest fee income.<sup>11</sup> Banks non-interest income consists of service charges on deposit accounts, card fees, trust and investment fees, merchant processing services, mortgage banking fees, operating leases, insurance, net losses on debt securities, equity investments gains, and trading account profits. Banks acknowledge that "free-checking" accounts create huge profits and seek out low-balance checking account customers. Checking accounts are "the primary vehicle by which dynamic banks are fueling their growth."<sup>12</sup>

CRC reviewed banks’ call reports posted on the Federal Financial Institutions Examination Council (FFIEC) web site<sup>13</sup> as well as annual reports that banks submit to their stockholders. Both of these reports contain a list of revenue sources that the banks list as non-interest fee income. From CRC’s research, revenue sources such as service charges on deposit accounts, card fees, and merchant processing services make up 40 to 64 percent of banks’ total non-interest income. Within these categories banks hide their overdraft fees. Banks will not disclose to the public the exact amount of money they make on overdraft fees. They consider this information to be proprietary.

<b>Overdraft Fee Increase</b>	<b>2006</b>	<b>2007</b>
<b>Bank of America</b>	\$34	<b>\$35</b>
<b>Bank of the West</b>	\$30	\$30
<b>Citibank</b>	\$30	\$30
<b>Union Bank</b>	\$34	\$34
<b>US Bank</b>	\$34	\$34
<b>Washington Mutual</b>	\$27	<b>\$30</b>
<b>Wells Fargo</b>	\$33	<b>\$34</b>

Banks make nominal increases in their overdraft fees year after year. From 2006 to 2007, three of the banks surveyed increased their fees by as much as \$1 to \$3. Without stronger regulations and legislation, it is likely that these banks will continue to increase their fees.

<sup>11</sup> Eric Halpern and Peter Smith, “Out of Balance: Consumers pay \$17.5 billion per year in fees for abusive overdraft loans,” Center for Responsible Lending, July 11, 2007, p. 9.

<sup>12</sup> King, William B., “Shattered Myths,” *Bank Director Magazine*, 4<sup>th</sup> Quarter 2004.

<sup>13</sup> [www.ffiec.gov](http://www.ffiec.gov)

## Legislative Initiatives

On July 27, 2005, Representative Carolyn Maloney (D-NY), introduced the Consumer Overdraft Protection Fair Practices Act. The Act proposed:

- To extend the protections of the Truth in Lending Act (TILA) to overdraft protection programs;
- To require customer consent before a bank initiates overdraft protection services and fees; and
- To prohibit systematic manipulation in the posting of checks and other debits to an account to generate overdraft protection fees.<sup>14</sup>

Representative Maloney currently serves as Chairwoman of the Financial Institutions Subcommittee. On February 8, 2007 she submitted another version with the same title, the Consumer Overdraft Protection Fair Practices Act, H.R. 946. This time around it received a warmer reception, perhaps due to the bill's co-sponsor, Barney Frank (D-MA), Chairman of the Financial Services Committee. A hearing for H.R. 946 was held on July 11, 2007.<sup>15</sup>

Those who testified at the hearing were overwhelmingly in favor of requiring banks to disclose overdraft fees according to TILA standards. When consumers know the APR on a loan, they can comparison shop for the best product. Those industry representatives that testified against the bill said that they would support the disclosure requirements but are unable to at this time because the proposed changes would require the banks to make technological and administrative changes to their systems that would be cost prohibitive.

If Congress approves HR 946, account holders will be protected in the following ways:

- Banks will be required to give consumers the choice whether to have debit card purchases approved even if they will result in an overdraft charge.
- Consumers will be given information so they can compare overdraft fees to other more inexpensive forms of overdraft protection.
- Banks will be required to warn the customer when an ATM withdrawal will trigger a fee—and allow the customer to cancel the transaction at that time.
- Banks will be prohibited from manipulating the order of check and debit card clearing to increase customers' overdraft loan fees.

The House Financial Services Committee was supposed to vote on the bill on September 25, 2007. The vote is currently delayed. Banking lobbyists are strongly opposed to the bill. Their arguments are focused on the costliness and technological problems to implement the bill's

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<sup>14</sup> <http://thomas.loc.gov/cgi-bin/query/z?c109:H.R.3449>

<sup>15</sup> [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/hr0705072.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml)

mandates. Both Representatives Maloney and Frank are open to negotiating with the banking industry so that agreed upon compromises can be made. These compromises could include not requiring banks to comply with TILA but rather focus on providing notice to consumers about what the fees are and what the service is.

It is uncertain when the bill will be brought up for a vote to the full committee. Regardless of the outcome, advocates have succeeded in bringing more awareness to law makers, regulators, and the public about the usurious nature of overdraft fees and banking practices that encourage their customers to overdraw their accounts.

### Recommendations

“Free” checking accounts should be free. Banks should not penalize their low-balance account holders who do not have the luxury of having a financial cushion to cover the uncertainties that these accounts impose. Banks should also work to illuminate these uncertainties by notifying their customers if they are about to overdraw, or by prohibiting debit and ATM transactions that will overdraw an account. Consumers, advocates, regulators and lawmakers need to demand that banks enact the following policies to protect their customers:

- Consumers should “opt-in” for overdraft/bounce protection, not be forced into it;
- Consumers should be alerted at their in-network ATM if the pending transaction will result in an overdraft and accompanying fee;
- Banks should process debit and checks in the order that they are received; and
- Customers’ deposits should be made available to them at the close of the business day they are deposited or the next day at the very latest;
- At the very least, customers should ask their banks to link their checking accounts to either a savings account, a line of credit, or a credit card. This is real overdraft protection at a fair price.

Even if H.R. 946, the Consumer Overdraft Protection Fair Practices Act is not passed into law, California consumers should contact representatives on the House Financial Services Committee and express their concerns about overdraft fees. These representatives are:

#### Democrats

Representative Maxine Waters  
Representative Brad Sherman  
Representative Joe Baca

#### Republicans

Representative Edward Royce  
Representative Gary Miller  
Representative John Campbell

Consumers can contact congress people and let them know that overdraft fees are unfair and create financial burdens for low-balance account holders.

What else can consumers do?

- Call the Comptroller of the Currency’s Customer Assistance Group at 1-800-613-6743. The more complaints they hear the more likely they are to enact regulations that will protect consumers rather than the banks.

- Write a letter to the CEO of your bank asking for the bank to provide starter accounts that do not cover overdrafts. These accounts would include an ATM card and not a debit card. These letters actually get noticed.  
Use CRC's Banking and Overdraft Guides (in Spanish and English) to better manage your "free" checking account. <http://www.calreinvest.org/>

If free checking is really free, account holders without a financial cushion should not be penalized and put in the vulnerable position of incurring excessive fees.



*This report was prepared by CRC Senior Policy Advocate Rhea L. Serna with assistance and valuable edits from Victoria Leon Guerrero*

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