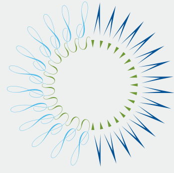

HIDDEN RISKS

The Case for Safe and Transparent Checking Accounts

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THE PEW HEALTH GROUP

HIDDEN RISKS

The Case for Safe and Transparent Checking Accounts

EXECUTIVE SUMMARY

A checking account is the most basic and necessary financial product for American consumers. Nine out of 10 Americans have a checking account, making it the most widely utilized financial services product in the United States. The federal government recognizes the importance of checking and other deposit accounts by insuring deposits up to $250,000 per account against the failure of the bank.[1] Checking accounts provide a secure way for Americans to collect earnings and make payments, and for many, they serve as the entry to the financial mainstream, where savings and credit products are available. As the vehicles for billions of transactions each day, checking accounts are essential to the national economy.

This ubiquitous product is at the center of profound changes to our system of transacting. Paper checks are increasingly a thing of the past as Americans use debit cards to access their checking accounts. The Check Clearing for the 21st Century Act of 2003 (Check 21 Act) allowed banks greater freedom to transmit funds electronically and reduced the paper trail provided to consumers.[2] Overdraft coverage programs once reserved for occasional use are now widespread. These changes are little understood by consumers, and their impact has been little studied. Scarce comprehensive data exist on the state of checking accounts in today's modern world.

In October 2010, the Pew Health Group's Safe Checking in the Electronic Age Project began a study of checking account terms and conditions to examine both the state of the marketplace and the effect of current regulations covering checking accounts. Pew analyzed more than 250 types of checking accounts offered online by the 10 largest banks in the United States, which hold nearly 60 percent of all deposit volume nationwide. In researching checking accounts, Pew charted the median and the range for many fees; the variations in key practices; and the extent of certain practices, including some that are the subject of legal challenges (see Table 4).[3]

Through this research, we identified five practices that put consumers at financial risk, potentially exposing them to high costs for little benefit.

Pew's findings are as follows:

- **Banks do not provide important policies and fee information in a concise and easy-to-understand format that allows customers to compare account terms and conditions among banks.** Pew's research showed that the median length of bank disclosures for key checking account policies and fee information was 111 pages. In addition, the banks often used different names for the same fee or service; put the information in different documents, different media (Web or hard copy), or different locations in a document; and did not summarize or collect key information anywhere.

- **Accountholders are not provided full information about the respective costs of overdraft options.** All 10 of the banks in the study, for at least some transactions, offered programs—"overdraft penalty plans"—in which the bank covers overdrafts for a set per-overdraft charge. Nine of the 10 banks also offered "overdraft transfer plans" in which the bank transfers funds to cover overdrafts in a customer's checking account from the customer's savings account,

credit card, or line of credit. Customers can also choose not to enroll in any overdraft plan to avoid these fees for ATM and point-of-sale (POS) debit card transactions. These plans have significantly different features and fees; however, banks are not required to provide full information at the time of opt-in about all overdraft options available, including the price for lower-cost options.

- **Bank overdraft penalty fees are disproportionate to the size of the median overdraft amount.** Overdraft fees will cost American consumers an estimated $38 billion in 2011—an all-time high.[4] The median overdraft amount is $36, yet the median overdraft penalty fee is $35. In addition, the majority of checking accounts charged an extended overdraft fee after a median of seven days if the fees and principal were not paid. The median extended overdraft fee was $25. While banks have to incur a risk that they will not be repaid, most institutions manage this by limiting the overdraft amount given to any customer.[5] Banks have long argued that overdraft penalty fees are not compensation for the cost of overdrafts to the bank but rather are designed to deter customers from repeating this behavior. Penalty fees in other consumer financial products (e.g., credit cards) are related in size to the violation.

- **Banks reserve the right to reorder transactions in a manner that will maximize overdraft fees.** Overdraft penalty fees are imposed each time a withdrawal is posted to an account with insufficient funds to cover it at that moment. Banks can maximize the number of times an account "goes negative" by reordering deposits and withdrawals to reduce the account balance as quickly as possible. Posting withdrawals before deposits and posting withdrawals from largest to smallest have the effect of maximizing overdrafts. Currently, no federal regulation governs posting order.[6] Only two banks in this study, representing 48 percent of accounts, commit to posting deposits before withdrawals. The rest reserve the right to post withdrawals first. As of October 2010, when Pew collected its data, all banks studied reserved the right to reorder transactions from highest to lowest amount. Since then, a limited number of banks have altered this policy and no longer post all withdrawals from highest to lowest for all of their accounts.

- **More than 80 percent of accounts examined contain either binding mandatory arbitration agreements or fee-sharing provisions that require the accountholder to pay the bank's losses, costs, and expenses in a legal dispute regardless of the outcome of the case.**[7] Seventy-one percent of account agreements reviewed by Pew require accountholders to submit to the decision of a private arbitrator selected by the bank in the case of a dispute. An additional 12 percent of checking account agreements in this study provided that accountholders have the right to settle their claims in a court, but the customer is liable for the bank's losses, costs, and expenses regardless of outcome. In the Wall Street Reform and Consumer Protection Act of 2010, Congress required the newly created Consumer Financial Protection Bureau (CFPB) to look at mandatory arbitration in contracts for financial products and services and, based on the findings, authorized the CFPB to write new rules limiting these clauses.[8]

Based on these findings, Pew recommends the following policy solutions to protect consumers, promote a competitive marketplace, and foster a level playing field among financial institutions:

- Policy makers should require depository institutions to provide information about checking account terms, conditions, and fees in a concise, easy-to-read format, similar to the Schumer Box used for credit cards.[9]

- Policy makers should require depository institutions to provide accountholders with clear, comprehensive pricing information for all available overdraft options when a customer is considering opting in to a program so that the customer can make the best choice among overdraft options, including choosing not to opt in for any overdraft coverage.

- Policy makers should require overdraft penalty fees to be reasonable and proportional to the bank's costs in providing the overdraft loan. Furthermore, we suggest that regulators monitor overdraft transfer fees and impose similar reasonable and proportional requirements if it appears that they are becoming so disproportionate as to suggest that they have become penalty fees as well.

- Policy makers should require depository institutions to post deposits and withdrawals in a fully disclosed, objective and neutral manner that does not maximize overdraft fees, such as in chronological order.

- The Consumer Financial Protection Bureau, in its study of arbitration agreements, should examine the prevalence of binding arbitration clauses; of fee shifting provisions; and of "loss, costs, and expenses" clauses in checking accounts and assess whether such provisions prevent consumers from obtaining relief.

INTRODUCTION

A checking account is the financial cornerstone for the overwhelming majority of American families—often the bank product that provides consumer entry into the financial mainstream. Nine in 10 adult Americans have a checking account, representing a significantly larger proportion of the population than those holding a mortgage or credit card.[10] Millions of consumers use bank or credit union checking accounts every day to collect their earnings and pay their bills. The federal government, through the Federal Deposit Insurance Corporation (FDIC), encourages the use of checking accounts by providing a guarantee that the money in them (up to $250,000 per account) is safe even if the bank fails.[11] As a result of these factors, checking accounts have come to play a vital role in the American economy by facilitating the safekeeping and transfer of funds for consumers and offering a gateway to savings and credit required for investments such as the purchase of homes and higher education. It is to the benefit of banks and consumers, and the nation as a whole, that checking accounts be safe and user friendly.

Yet checking accounts lack some important types of consumer protections compared to other consumer financial products. For example, credit cards have limitations on the dollar amount of late fees and over-the-limit fees.[12] In addition, their applications must clearly and concisely disclose key terms in what is known as a "Schumer Box" (see Figure 2).[13] In contrast, checking accounts have neither limitations on fees nor any requirements that critical information be presented in a consolidated format.

Regulators are authorized by federal banking laws to reduce risks to consumers in checking accounts, but that authority has not been actively utilized.[14] Checking accounts are subject to disclosure requirements under the Truth in Savings Act and the Electronic Fund Transfer Act.[15] However, Pew's research shows that these requirements have not been effective in producing clear and useful information for consumers. In addition, the Electronic Fund Transfer Act and the Uniform Commercial Code provide certain dispute rights to consumers.[16] The Expedited Funds Availability Act governs how long a bank may hold a deposit before posting it to a customer's checking account.[17] Despite substantial advances in technology that speed the processing of a deposit, the Board of Governors of the Federal Reserve (the Fed) has only recently proposed the first update in over 20 years to the relevant regulations.[18] Protections are also found in the Federal Trade Commission Act (FTCA), which defines "unfair or deceptive acts or practices" (UDAP) and allows certain banking regulators to ban such practices, yet no federal agency has ever applied these provisions to checking account practices.[19]

Nine of the 10 banks in our study are currently supervised by the Office of the Comptroller of the Currency.[20] The Fed, under the FTCA, has the authority to write UDAP regulations governing providers of checking accounts and other consumer financial products.[21] However, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 transfers rule-writing authority and supervision for all 10 of the banks that Pew examined to the new Consumer Financial Protection Bureau (CFPB), and its regulatory reach will include the power to ban those practices that are deemed to be "abusive" and "unfair or deceptive."[22] Beyond this broad authority, the CFPB is also authorized to write regulations to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed.[23]

WHAT DOES "ABUSIVE"[24] MEAN?

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 defines as "abusive" any act or practice that:

"materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or takes unreasonable advantage of

a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

c) the reasonable reliance by the consumer on a covered person [a provider of a consumer financial product or service] to act in the interests of the consumer."

In October 2010, the Pew Health Group's Safe Checking in the Electronic Age Project began a study of checking account terms and conditions to examine both the state of the marketplace and the effect of current regulations covering checking accounts. This expansive research analyzed more than 250 types of checking accounts offered online by the 10 largest banks in the United States, which hold nearly 60 percent of all deposit volume nationwide.[25]

To evaluate the safety and transparency of checking accounts, Pew sought to quantify both the types and size of fees, as well as the important bank policies that Americans are most likely to encounter while using their checking accounts. In researching checking accounts, Pew charted the median and the range for many fees; the variations in key practices; and the extent of certain practices, including some that are the subject of legal challenges.[26] Pew researchers collected checking account data found both online and in paper copy at bank branches (see Appendix B: Methodology).[27]

From this research, we identified patterns that impose hidden, unnecessary, and potentially dangerous risks on consumers. Based on these findings, we segmented this paper into five topic areas: disclosure, overdraft options, overdraft fees, processing of deposits and withdrawals, and dispute resolution. Potential solutions to undue risks are also indentified.

I. DISCLOSURE

Product information, from nutrition labels on food to dealer stickers on new cars, allows consumers to make informed choices when selecting and purchasing goods. In the world of consumer finance, disclosure functions as the threshold mechanism to protect consumers. Full and accurate transparency in fees and services is essential to keeping consumer markets fair for both buyers and sellers. Disclosure is critical to promote competition, which requires informed customers who can rationally choose among available products and services.

The checking accounts in this study had a median of *111 pages of disclosure documents*, consisting of account agreements, addendums to account agreements, fee schedules, and pages on the bank's Web site. Many of these documents are not user friendly, with much of the text densely printed, difficult to decipher, and highly technical and legalistic. For an excerpt of a disclosure document, see Figure 1.

None of the banks examined collected key information in a single place. Rather, most disperse key terms and conditions across multiple lengthy documents of different types, making it extremely difficult for consumers to identify and locate the information they need when comparing and choosing checking accounts. Further complicating the matter, different banks locate the same information in different places. As a result, consumers must navigate a confusing maze of disclosure documents in their efforts to locate all of the important account information. Pew's research indicates a need for improved, organized disclosure of the terms and conditions of checking accounts.

Only two pieces of information were generally accessible on every account's Web page: the monthly fee and a list of possible ways to avoid the monthly fee. Key terms and conditions such as the amount of any overdraft fee or stop payment fee were not available on the account Web pages of nine out of 10 banks in the study. As noted in Table 1, Bank of America provided the most information for account terms and fees. However, six key terms were not available on any of the banks' account Web pages: the order in which the bank processed credits and debits, the overdraft transfer fee, the fee when a bank rejects a check written to the customer for nonsufficient funds, dispute restrictions, other service fees, and the deposit hold policy.

Because there is no industry-wide consensus on terminology, different names are used for the same fees and stipulations. For example, what this report refers to as an overdraft penalty fee was described by different banks variably as an "overdraft fee," "overdraft item fee," "insufficient funds fee," "unavailable funds fee," "overdraft item paid fee," "unavailable funds penalty," or a "returned/paid items fee."

TABLE 1: Accessibility of Important Account Information

Are the most important fees and policies commonly located on each account's Web page?

Banks	Bank of America	Chase	Wells Fargo	Citibank	U.S. Bank	PNC	TD Bank	SunTrust	Capital One	HSBC
Minimum Needed to Open		YES	YES	YES	YES	YES	YES	YES	YES	
Monthly Fee	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Requirements to Waive Monthly Fee	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Interest*		YES		YES	YES	YES	YES	YES		
Fees at Proprietary ATMs**		YES	YES		YES	YES	YES	YES		YES
Fees at Non-Proprietary Bank ATMs**	YES	YES	YES	YES	YES	YES	YES	YES		YES
Overdraft Penalty Fee	YES									
Maximum Number of Overdraft Fees per Day	YES									
Extended Overdrawn Fee	YES									
NSF Fee	YES									
Stop Payment Fee	YES									

Note: Data represent 265 checking accounts offered by the 10 largest American banks by deposit, which collectively hold nearly 60 percent of all deposits in the United States, and are current as of October 2010. Banks are listed from left to right in order of deposit volume held. This table shows whether each piece of important account information for consumers, as determined by Pew, was most often located on each account's Web page on the banks' Web sites. For instance, if the majority of a bank's account Web pages did not disclose the fee or provision, the corresponding box in Table 1 is blank.

*A minority of checking accounts in the study provide interest. Data reflect whether the account Web page mentions this feature in any way.

**Multiple fees at ATMs may be charged for items such as a statement copy fee. Data here include whether a fee for cash withdrawal is disclosed.

FIGURE 1: Sample Page from a Checking Account Agreement

Internet Enforcement Act, 31 U.S.C. Section 5361 et.seq. (4) You have committed an allegedly fraudulent act, or, if any claim, whether oral or written, has been made upon the Bank due to your actions. Or, (5) upon notice of a bankruptcy filing. Payment will be suspended on your Account until the dispute, allegation, or problem is resolved or determined to the Bank's satisfaction. In no event will the Bank be liable for any delay or refusal to follow instructions or for returning items unpaid that occur as a result of a dispute or uncertainty over the ownership or control of your Account or the suspension or freezing of your Account for any of the reasons stated above.

In the event we receive a documented claim for a forged, irregular, altered (including payee and dollar amounts), or unauthorized endorsement on a check or draft deposited into your Account, the Bank is authorized to debit your Account for the amount of the claim, without prior notice to you. The Bank will have no liability for honoring the claim.

You agree to be liable to the Bank for any loss, costs, including, but not limited to reasonable attorney's fees, or expenses, to the extent permitted by law that we incur as a result of any dispute involving your Account. You authorize us to deduct any such loss, costs, or expenses from your Account without prior notice to you.

Legal Process Against Account. You acknowledge and agree that because the Bank has offices in multiple states, if any legal process is served upon the Bank, we may honor such service and charge your Account, regardless of jurisdiction or where or how served. You agree that we may accept any legal process we believe to be valid without any liability to you and that we may, in our discretion, waive such service and accept legal process by mail, electronic mail, facsimile or other means. If we receive any court order or similar process, or if we are required to suspend payment by any law or regulation including, but not limited to those issued by the Office of Foreign Assets Control, we may suspend payment or comply with the terms of the order or similar process on any Account that we believe to be affected by the order. Payment will be suspended until final resolution of such court order or similar process or until the applicable law or regulation authorizes resumption of payments, even though such suspension or compliance may be due to inadvertency or error due to the similarity of names of Depositors or other mistakes. If your Account is attached, garnished, or otherwise subject to levy by lawful legal action, we will not be liable to you for any sums we pay or freeze because of such attachment, garnishment, or other levy, even if paying or freezing the money from your Account leaves insufficient funds to pay a check you have written. After receiving legal process, we may freeze or remove the funds at issue from your Account and you agree that we are not required to pay interest on such funds. If we incur any expenses including, without limitation, reasonable attorney's fees in responding to a court order or similar process that is not otherwise reimbursed, we may charge such expenses to your Account without prior notice to you. Any attachment, garnishment or other levy against your Account is subject to the Bank's right of offset and security interest. The Bank's fees for garnishment, levy, or other attachment against your Account are due when the garnishment, levy or other process is issued, and the Bank may offset these fees from your Account prior to honoring any garnishment, levy, or other attachment. You agree that the Bank will not be liable for any hold or freeze placed on your Account, including any items returned unpaid because of such a hold or freeze, even if some or all of the funds in the Account are exempt from garnishment, levy, or other attachment.

Note: This snapshot of text is on page 20 of SunTrust's "Rules and Regulations for Deposit Accounts."

DISCUSSION

Federal regulators have abundant legal authority to prescribe clear and helpful disclosure for checking accounts. The Truth in Savings Act (TISA) requires banks to offer a schedule of specified terms and conditions for all deposit accounts prior to account opening that must be available on demand to consumers so that they can "understand and compare accounts."[28] TISA provides authority to issue regulations, enforce its requirements, and issue model forms for disclosure.[29] Similarly, the Electronic Fund Transfer Act requires financial institutions to disclose the terms and conditions when a consumer signs up for electronic fund transfer services, such as an ATM card or a debit card.[30] In addition, this act allows regulators to issue rules, enforce its requirements, and issue model clauses to facilitate compliance.[31]

Current regulations leave some gaps that permit the less-than-optimal disclosure observed by Pew researchers. Under TISA regulations, banks must disclose the minimum balance required to open an account, as well as a schedule of all account fees with the conditions under which each fee will be assessed.[32] The disclosures must be made "clearly and conspicuously, in writing, and in a form the consumer may keep."[33] However, there are no requirements pertaining to format or layout (e.g., font size, order, or page length).[34] Disclosure can also be made in combination with other account terms and other types of accounts.[35] Further regulations under the Electronic Fund Transfer Act require institutions to disclose fees and limitations on electronic fund transfers, as well as a summary of the accountholder's liability for unauthorized transfers.[36] In contrast to TISA regulations, the Electronic Fund Transfer Act disclosure requirements do not apply to potential customers.[37]

Disclosures are critical for consumers to make informed decisions, but the information needs to be presented in a format that is clear and understandable. They should convey key terms and conditions with clarity so that consumers can compare products and make purchasing decisions that best meet their needs. Based on the Schumer Box, which provides information on these fees and terms for credit cards, Pew has developed a disclosure box to give similar information to checking account customers.

FIGURE 2: Pew's Model Disclosure Box for Checking Accounts

BASIC TERMS AND CONDITIONS				
Account Opening and Usage		Minimum Deposit Needed to Open Account	$	
		Monthly Fee	$	
		Requirements to Waive Monthly Fee		*Minimum combined account balance, direct deposit or other conditions*
		Interest Rate	%	
		ATM Fees	$	**for using your bank's ATM**
		ATM Fees	$	**for using another bank's ATM**
		Non-Sufficient Funds (NSF) Fee	$	**per item**
		Returned Check Fee	$	**per declined check written to your account**
		Stop Payment Fee	$	**per item to stop payment for up to X months**
		Account Closing Fee	$	**if account closed within Y days of opening**
		Other Service Fees		**Please consult the back of this document for a list of additional service fees.**
Overdraft Options for Consumers with Debit Cards	Option A: (Default)	No Overdraft Service		**If you choose not to opt in to any kind of overdraft service, transactions that would cause an overdraft will be declined at no cost to you.**
	Option B:	Overdraft Transfer Fee	$	**per overdraft covered by transfer from linked savings account, line of credit, or credit card**
	Option C: Overdraft Penalty	Overdraft Penalty Fee	$	**per overdraft covered by bank advance**
		Maximum Number of Overdraft Penalty Fees per Day		
		Extended Overdraft Penalty Fee	$	**every Mth day the account is overdrawn, starting N days after the account is first overdrawn**
Processing Policies		Posting Order *The order in which withdrawals and deposits are processed*		*Summary of policy*
		Deposit Hold Policy *When funds deposited to your account are available*		**• Cash deposit with teller: X business day • Cash deposit at ATM: X business day • Check deposit with teller: Y business day • Check deposit at ATM: Y business day • Direct deposit: X business day • Wire transfer: X business day • If something causes a longer hold on a deposit, the first $200 of that deposit will be made available either the same business day of the deposit or the next business day. • Funds from non-bank checks may take an extra business day to become available.** *A "business day" is a non-holiday weekday. The end of a business day varies by branch, but it is no earlier than T p.m.*
Dispute Resolution		Dispute Resolution Agreement		*Summary of agreement*

II. OVERDRAFT OPTIONS

Currently, there are two main categories of overdraft products. Because banks describe these using dissimilar terms, for the purposes of this report, "overdraft penalty plans" are defined as short-term advances made for a fee by *the bank* to cover an overdraft. On the other hand, "overdraft transfer plans" involve a *transfer* from another account or plan, either a savings account, credit card, or overdraft line of credit, to pay for any overdrafts. Customers must affirmatively sign up for such plans and establish the second account.

Overdraft Penalty Plans

Every checking account analyzed offered an overdraft penalty plan for at least some transactions. Under such plans, when a customer's withdrawal or purchase exceeds the checking account balance, the bank has the discretion to allow the transaction and pay—for a fee—the overdraft via a short-term advance; however, the bank is not obligated to cover any overdrafts. If the bank covers the transaction, the customer must repay both the overdraft amount and the fee in a short period of time—usually less than a week—or incur another fee known as an extended overdraft fee.

As of August 15, 2010, financial institutions must obtain the affirmative consent (known as opt-in) of customers before enrolling them in an overdraft penalty plan that covers debit card transactions at points-of-sale and ATMs.[38] If a customer does not opt in, any debit card transactions that overdraw the account will be denied with no fee charged. However, banks can apply overdraft penalty plans for overdrafts by checks and deductions made through the Automated Clearinghouse (ACH) network without obtaining affirmative customer consent.

Two of the banks included in this study, Bank of America and Citibank, have publicly indicated that they will not charge overdraft penalties on either debit or ATM transactions.[39] While Bank of America specifically states this in its account disclosures, Pew researchers were unable to find similar explicit disclosure in the Citibank "Client Manual."[40]

Overdraft Transfer Plans

Nine of 10 banks studied (representing 98 percent of accounts) offered overdraft transfer plans. In such plans, if a customer makes a transaction that overdraws his or her checking account, the bank arranges for the payment of that transaction by transferring money to the customer's checking account from the customer's linked savings account, credit card, or overdraft line of credit. The bank charges a fee for processing this transfer of funds.

DISCUSSION

Pew research shows that, while overdraft transfer plans require accountholders to set up a linked account, they may be a preferable choice for most consumers because (1) the fee per overdraft is less than an overdraft penalty fee (a median of $10 as opposed to a median of $35); (2) there is no risk of extended overdraft fees since the overdraft itself is repaid immediately; (3) the bank must cover the overdraft if there are sufficient funds in the linked account and if the maximum number of permissible transfers has not been previously exceeded; and (4) for transfers from overdraft lines of credit and credit cards, the consumer is generally permitted a longer timeframe to repay the credit and may sometimes do so in installments.[41]

The Fed has recently enacted rules that prohibit banks from charging overdraft penalty fees on ATM and POS debit cards unless the individual has opted in. While no current regulation requires that comprehensive information about all available overdraft options (including

fee amount) be provided at the time the accountholder seeks overdraft coverage, financial institutions that offer overdraft penalty plans must provide a form that discloses these options. The customer must agree to the terms and sign the form in order to opt in.[42] The Fed's model opt-in form describes overdraft penalty plans as the "standard overdraft" option and only briefly mentions the existence of other alternatives. While a description of price and the circumstances under which the overdraft penalty fee will be assessed is included, the model form does not include the price of overdraft transfers.[43] In addition, the Fed's form does not discuss the option not to opt in to overdraft coverage, a choice that would allow customers to avoid exceeding their available balance or incurring any overdraft fees. The Fed could modify this form to require additional disclosure regarding overdraft transfer plans.

III. OVERDRAFT FEES

Overdraft Penalty Fee

When a bank uses an advance to cover a transaction that would overdraw a checking account, it charges an overdraft penalty fee. Pew's research found that the median overdraft penalty fee was $35, with a range of $10 to $36.

The FDIC's research shows that the median overdraft amount is $36.[44] If the median overdraft penalty fee of $35 is applied to a $36 overdraft with a repayment period of seven days, the APR, or annual percentage rate, on the typical overdraft would be over 5,000 percent—a costly way to address credit needs.[45]

Maximum Number of Overdraft Penalties per Day

Nine out of 10 banks (representing 98 percent of accounts discussed herein) put a limit on the number of overdraft penalty fees charged to a customer on a given day. Banks may choose to decline additional overdraft transactions that exceed this daily limit. The median cap on overdraft penalties per day for the studied accounts was four, with the range being three to six overdrafts per day. Under this system, median overdraft penalty fees of $35 thus make it possible for a customer to be charged *$140* or more per day. The 10th bank sets no cap on overdraft penalty fees per day.

Extended Overdraft Penalty Fee

If a customer's account remains overdrawn for a specified number of days, banks will charge an extended overdraft penalty fee for every given number of days that the account remains overdrawn, meaning that a single overdraft in a penalty program can trigger multiple fees if not repaid promptly. Banks also refer to these fees as "sustained" or "continuous" overdraft fees. Six of the 10 banks examined (representing 45 percent of accounts) charged extended overdraft fees.

The median extended overdraft penalty fee was $25, with the fee varying among accounts from $7 to $36. The median number of days that an account must be overdrawn in order to begin incurring extended overdraft penalty fees was seven days. Thereafter, the median interval number of days before the next extended overdraft penalty fee could be charged was also seven days, with a range of five to 10 days.

One bank (two percent of accounts) capped the cumulative total of extended overdraft penalty fees that a customer could accrue in one continuous period at $98. However, it started charging a $7 extended overdraft fee after only four days, charging a fee every day the account remained overdrawn up to the $98 cap. In this scenario, a customer could be

charged an overdraft penalty fee and a subsequent $98 in extended overdraft fees for only a single overdraft violation.

Overdraft Transfer Fee

The median overdraft transfer fee was $10. These fees ranged from $5 to $20. Because the overdraft is repaid immediately using an accountholder's own funds under this plan, the customer incurs no extended overdraft fee.

Maximum Number of Overdraft Transfers per Day

For those overdraft transfer plans in which the linked account is a savings account, there are restrictions on the number of transfers allowed under federal law. Regulation D (Reg. D) limits electronic withdrawals (i.e., those not made at a teller or an ATM) to six per month or statement cycle.[46] For overdraft transfer plans in which the linked account is a credit card or line of credit, the maximum number of overdraft transfers in a given period, if there is one, varied according to the terms of the specific account agreement for the linked account.

Non-Sufficient Funds Fee

All banks disclosed a Non-Sufficient Funds (NSF) fee. If a customer attempts to make a check payment that would overdraw his or her account, and if the bank chooses not to cover this attempted transaction, then the bank will charge the customer an NSF fee. However, if a customer has an overdraft transfer plan, an NSF fee is triggered only if the check amount exceeds what is available from the linked accounts. The median NSF fee was $35, with a range of $10 to $36.

DISCUSSION

Overdraft fees and practices cost consumers billions of dollars every year and put many at risk for loss of their checking accounts.[47] Two academic studies conducted in 2008 found that virtually all involuntary checking account closures are the result of too many instances of the consumer's account being overdrawn.[48] Regulators have noted this risk as well. In its November 2010 Overdraft Payment Supervisory Guidance, the FDIC stated: "Extremely high costs in comparison to the overdraft benefit and/or permitting product over-use often result in customer dissatisfaction and complaints. Serious financial harm can result for consumers with a low or fixed income."[49]

Neither the number nor the amount of overdraft penalty fees is limited by UDAP protections.[50] Moreover, there are no federal regulations stating when an extended overdraft fee for the same transaction can be imposed.[51] Of the banking regulators, the FDIC has taken the lead in addressing overdraft fees. The FDIC's November 2010 guidance to its member banks advised them to contact customers who overdraw their accounts six times in a 12-month period to discuss alternate options to overdraft penalty plans, such as overdraft transfers, small-dollar loans or opting out of overdraft penalty plans.[52] In 2005, the Office of Thrift Supervision (OTS) provided similar guidance to savings and loan institutions, though it stopped short of specific guidelines for when accountholders should be contacted.[53] To date, other regulators have not followed suit with promoting alternate options. Indeed, none of the banks in the Pew study are supervised by the FDIC or OTS, so their guidance does not apply to them.

Unpredictable and repeated overdraft fees pose particular dangers to those who maintain smaller balances with less of a cushion to absorb unexpected charges. While many accountholders have an occasional overdraft, research by the FDIC and others indicates that a relatively small group of consumers regularly incurs overdrafts.[54] These customers tend to be new entrants to banking—young persons and low- and moderate-income individuals—exactly

those who can least afford substantial overdraft fees.[55] Previous Pew research demonstrates the risks that overdraft penalty fees pose for low-income individuals. Pew's study of economically poor areas of Los Angeles found that "fully 18% of the [consumers who] banked in the Los Angeles neighborhoods surveyed incurred insufficient funds or overdraft fees three or more times in the past year. Of those who have overdrafted their account, nearly three-quarters (72%) 'did not know they were out of money' at the time."[56]

Overdraft fees far exceed the incremental cost to the bank of providing this service since these transactions, designed to be paid back with the customer's next deposit, pose minimal credit risk. Yet banks maintain that overdraft penalty fees are just that—penalties—and are meant to deter customers from overdrafting.[57] However, if the point is to deter customers from exceeding their account balance, the most direct way to do this is to simply deny the overdraft itself.

Other such penalty fees in the consumer financial arena are subject to a reasonable and proportional standard.[58] For example, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) addressed the size of penalty fees in credit cards by requiring that the fees be "reasonable and proportional" to a cardholder's act or omission and prohibiting multiple fees for the same transaction.[59] Pursuant to that mandate, the Fed has issued rules restricting credit card penalty fees, with some exceptions, and provided a "safe harbor" of the lesser of the amount of the violation or a limit of $25 for the first transgression.[60] While not mandatory, this regulatory safe harbor provides a model attractive to credit card companies seeking certainty that their fees will be approved by regulators and upheld by courts.

Overdraft transfer plans generally are better products for consumers since they help them live within their means and cut off the potential for a cycle of debt. However, rising overdraft transfer fees disincentivize savings and push customers into overdraft penalty plans. These trends could be worsened if overdraft penalty fees are regulated while transfer fees are not. Transfer fees are already high: $10 can be considered an excessive charge for a consumer to access his or her own money, and as such it is hard to justify this as the incremental cost of the service to the bank.

IV. PROCESSING OF DEPOSITS AND WITHDRAWALS

Transactions presented on a given day for posting are frequently processed in an order different from that in which they occurred. Such a reordering can greatly impact the overdraft fees incurred by consumers. Pew's research shows that, in October 2010, only one of the 10 banks studied, representing less than five percent of accounts, informed accountholders of the order in which all debits and credits are posted.

Two of the 10 banks studied (representing 48 percent of accounts) informed customers that they process credits before debits for that day. The other eight reserved the right to process debits before credits. Of these, two (representing 20 percent of accounts) explicitly reminded customers that the posting order was at the bank's discretion, and six (32 percent of accounts) failed to disclose their debit-credit processing order, implicitly retaining the right to post debits before credits.

As of October 2010, when Pew collected its data, all banks and all accounts in Pew's study reserved the right to process all debits presented in a given day from highest dollar amount

to lowest dollar amount. Since that time some banks have begun disclosing changes to their practices. For example, Wells Fargo, Chase, and Citibank disclosed that they would no longer reorder certain types of transactions for at least a portion of their accounts.[61] A recent court ruling required Wells Fargo to change its policy on deposit sequencing. Pursuant to a court order arising from the California case *Gutierrez v. Wells Fargo*, Wells Fargo has stated that it will now process ATM and debit card transactions from low to high for accounts in that state. Wells Fargo has indicated that beginning in May 2011, it will post most transactions chronologically or low to high for all accounts. Chase Bank also updated its posting order policy for all of its accounts and disclosed that it processes debits "in the order in which they were authorized, withdrawn, cashed, or deposited, as appropriate. When this is not possible because of the bundling of transactions, the posting order will be from highest to lowest amount."[62] It has been reported that as of July 2011, Citibank will begin clearing smaller checks before larger ones.[63]

DISCUSSION

Currently, there are no federal regulations that govern the order of posting among transactions processed on the same day. There is no legal requirement that banks post deposits before withdrawals, nor any law or regulation governing the order in which they post either debits or credits.[64] Some banking regulators have chosen to advise the financial institutions under their jurisdiction on best practices regarding transaction posting procedures. However, this guidance does not constitute comprehensive federal regulation. The FDIC's November 2010 overdraft guidance states that FDIC-member banks should review their checking procedures to "ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order."[65]

Only one of the banks in our study explicitly stated the order in which it posts all transactions (both debits and credits) for some, if not all, accounts. For those who do not have accounts with this bank, even the most careful accountholders cannot predict or control the fees resulting from hidden posting order practices.[66]

Posting orders that maximize overdraft fees, especially those that post withdrawals from largest to smallest (for an example, see Table 2), continue to be the subject of numerous court challenges as an unfair and deceptive practice under state laws.[67] Plaintiffs argue that the practice enriches the bank at the expense of consumers who receive no benefit from the reordering of their daily debits or credits.[68] In response, banks have argued that customers prefer the largest withdrawals to be posted first because these are the most important (e.g., rent or mortgage payments) and, therefore, the transactions that one wants to have paid first.[69] However, by opting in to overdraft coverage, the customer has expressed the desire to have all overdrafts covered regardless of size.

TABLE 2: From *Gutierrez v. Wells Fargo*: The Effect of High-to-Low Posting Order

High-to-Low Posting: How the bank ordered transactions

DATE	TRANSACTION DESCRIPTION	$ +/–	BALANCE
10/5	**Starting Balance**		**$316.90**
10/5 – 5	Return of Autozone purchase	$17.23	
			$334.13
10/10 – 1	Online transfer of funds to another account	–$80.00	
			$254.13
10/6 – 3	ATM withdrawal at a Non-Wells Fargo ATM	–$22.00	
			$232.13
10/6 – 4	Non-Wells Fargo ATM fee	–$2.00	
			$230.13
10/7 – 1	Debit card purchase at Albertsons Supermarket	–$74.39	
			$155.74
10/10 – 2	Check #1103	–$65.00	
			$91.74
10/5 – 2	Debit card purchase at Autozone	–$47.99	
			$42.75
10/6 – 1	Debit card purchase at IHOP Restaurant	–$26.51	
			$16.24
10/5 – 3	Debit card purchase at Autozone	–$17.23	
			-$0.99
	Overdraft Penalty Fee	–$22.00	
			–$22.99
10/5 – 1	Debit card purchase at Subway Restaurant	–$11.27	
			–$34.26
	Overdraft Penalty Fee	–$22.00	
			–$56.26
10/6 – 2	Debit card purchase at Farmer Boys Restaurant	–$8.10	
			–$64.36
	Overdraft Penalty Fee	–$22.00	
			–$86.36
10/5 – 4	Debit card purchase at Autozone	–$3.23	
			–$89.59
	Overdraft Penalty Fee	–$22.00	
10/10	***Final Balance***		***–$111.59***
	Total Cost of Overdraft Fees		**–$88.00**

Chronological Posting: How the transactions actually occurred

DATE	TRANSACTION DESCRIPTION	$ +/–	BALANCE
10/5	**Starting Balance**		**$316.90**
10/5 – 1	Debit card purchase at Subway Restaurant	–$11.27	
			$305.63
10/5 – 2	Debit card purchase at Autozone	–$47.99	
			$257.64
10/5 – 3	Debit card purchase at Autozone	–$17.23	
			$240.41
10/5 – 4	Debit card purchase at Autozone	–$3.23	
			$237.18
10/5 – 5	Return of Autozone purchase	$17.23	
			$254.41
10/6 – 1	Debit card purchase at IHOP Restaurant	–$26.51	
			$227.90
10/6 – 2	Debit card purchase at Farmer Boys Restaurant	–$8.10	
			$219.80
10/6 – 3	ATM withdrawal at a Non-Wells Fargo ATM	–$22.00	
			$197.80
10/6 – 4	Non-Wells Fargo ATM fee	–$2.00	
			$195.80
10/7 – 1	Debit card purchase at Albertsons Supermarket	–$74.39	
			$121.41
10/10 – 1	Online transfer of funds to another account	–$80.00	
			$41.41
10/10 – 2	Check #1103	–$65.00	
			–$23.59
	Overdraft Penalty Fee	–$22.00	
10/10	***Final Balance***		***–$45.59***
	Total Cost of Overdraft Fees		**–$22.00**

Note: Data in this chart were taken directly from the opinion in *Gutierrez v. Wells Fargo Bank*. The left column illustrates how Wells Fargo was able to charge Ms. Gutierrez four overdraft penalty fees (a total of $88) through manipulating the posting order to deplete her balance more quickly. The right column shows what the balance would have been had the transactions been posted chronologically. In the second scenario, Ms. Gutierrez would have been charged only a single $22 overdraft penalty fee.[70]

Some courts have dismissed similar cases on the basis that state laws do not apply to national banks.[71] However, in *Gutierrez*, the federal court in California rejected this argument of preemption and applied state law to find that Wells Fargo's large-to-small posting order for debit card transactions was an unfair and deceptive practice.[72] The court also rejected the "consumer preference" argument, holding that the bank was required to cover the vast majority of the debit card transactions at issue regardless of the amount, as it had already authorized the purchase.[73] Other pending actions under several state laws have been consolidated in the Southern District of Florida.[74] All 10 banks in the Pew study are or were defendants in the ongoing case.

In order to allow accountholders to track their balances and manage their spending, transactions should be processed in a predictable manner that responsible customers can follow. Posting order should be objective and neutral rather than designed to maximize fees. All transactions should be posted in an order clearly disclosed by the bank as part of the consolidated pre-account opening disclosure discussed previously in this report.

One option that would establish policy principles and provide regulatory certainty for banks would be a transparent system of "safe harbors," such as has been used in other financial services regulations.[75] In this case, bank regulators could create a safe harbor posting protocol to apply to all depository institutions and presumptively insulate those following it from liability and regulatory scrutiny.[76]

Such a model could be structured to be both objective and fair, without the effect of maximizing overdraft fees. For example, a standard of chronological posting order is neutral and transparent to both banks and consumers. The safe harbor protocol also could reflect the technical demands of different types of transactions. Bank systems can recreate chronological order for any transaction with a time stamp, but a different neutral and objective protocol for items lacking a unique time stamp could be used, such as by check number.

V. DISPUTE RESOLUTION

All 265 accounts examined had some kind of dispute resolution restriction clause in their agreements that limited the options available to a customer seeking to enforce his or her rights under the bank's terms. The overwhelming majority of these, 255 accounts (representing eight out of 10 banks), required the accountholder to waive the right to trial by jury. For 189 of these accounts (representing four out of 10 banks and 71 percent of all accounts), the accountholder had to waive the right to a trial before a judge and agree to have the dispute resolved before a private arbiter of the bank's choice. One bank (representing six percent of accounts) required customers to accept binding arbitration if they did not explicitly opt out in writing within 45 days of account opening.

TABLE 3: Dispute Resolution Provisions

How do banks restrict customers' access to courts in the case of dispute?

Checking Account Dispute Resolution Terms	Percentage of Accounts
Customer waives right to jury trial	96%
Customer waives right to class action	94%
Customer required to enter binding mandatory arbitration agreements	71%
Customer must pay the bank's losses, costs, and expenses	12%

Note: Data represent 265 checking accounts offered by the 10 largest American banks by deposit, which collectively hold nearly 60 percent of all deposits in the United States. Most accounts disclose more than one dispute resolution restriction.

On top of these restrictions of consumers' legal rights, six banks (representing 19 percent of accounts) include fee-shifting provisions in their account contracts. If these clauses were enforced as written, a customer who prevailed against a bank would theoretically end up paying the bank for the results of that win.

Pew's research shows that Bank of America places the fewest restrictions on customers' access to legal remedies. This bank allowed customers to go before a judge and did not disclose any fee-shifting agreements.

DISCUSSION

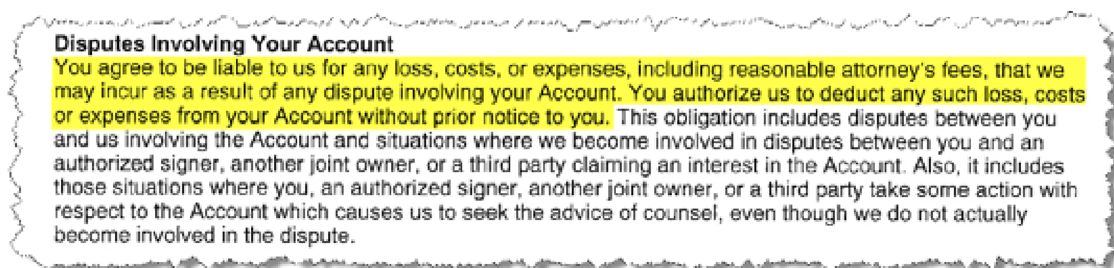
Nearly three-quarters of the accounts in this report (189 out of 265) included mandatory arbitration clauses that prevent customers from going to court to settle a dispute. Some academics and advocates have criticized these arbitration agreements and their administration as biased in favor of industry.[77]

The Federal Arbitration Act generally makes arbitration agreements valid as a matter of federal law. However, some arbitration agreements have been challenged under the laws of several states that prohibit "harsh, one-sided, and oppressive" terms in so-called "contracts of adhesion" (i.e., contracts that are not freely negotiated).[78] Recently, the U.S. District Court for the Southern District of Florida struck down the arbitration agreements of several banks

because they were buried in single-spaced, small-print, boilerplate language and had terms such as limits on class actions and cost-shifting clauses that would prevent a plaintiff from hiring a lawyer.[79]

Finally, some banks in our study allowed customers to take them to court but required the customer to pay the bank's "loss, costs, and expenses" regardless of the outcome. While fee-shifting agreements like these are usually held unenforceable against prevailing parties, they have the effect of chilling the ability of consumers to enforce the account agreement.[80]

FIGURE 3: A "Loss, Costs, and Expenses" Clause



Disputes Involving Your Account
You agree to be liable to us for any loss, costs, or expenses, including reasonable attorney's fees, that we may incur as a result of any dispute involving your Account. You authorize us to deduct any such loss, costs or expenses from your Account without prior notice to you. This obligation includes disputes between you and us involving the Account and situations where we become involved in disputes between you and an authorized signer, another joint owner, or a third party claiming an interest in the Account. Also, it includes those situations where you, an authorized signer, another joint owner, or a third party take some action with respect to the Account which causes us to seek the advice of counsel, even though we do not actually become involved in the dispute.

—From the PNC Account Agreement

The Wall Street Reform and Consumer Protection Act of 2010 requires the CFPB to study and report to Congress on the use of arbitration agreements in financial products and services.[81] Based on this research, the CFPB is authorized to prohibit or impose limitations on these agreements should it find that to do so protects consumers and is in the public interest.[82]

VI. THE COST OF A CHECKING ACCOUNT

For this report, Pew tracked bank practices regarding the cost of the important fees and the terms of the key policies included in the model disclosure box in Figure 2. Table 4 summarizes Pew's findings on this data collected from the checking accounts offered by the banks included in this study.

TABLE 4:

Median Fees and Most Common Policies for Checking Accounts as of October 2010

What does the median checking account look like?

ACCOUNT DISCLOSURES		
Median Length of Disclosures	**111**	pages
ACCOUNT OPENING & USAGE		
Minimum Amount Needed to Open Account	**$100**	
Monthly Fee	**$8.95**	
Minimum Combined Account Balance to Avoid Monthly Fee	**86%**	of accounts waived a monthly fee with a minimum balance.
	$2,500	median minimum combined account balance
Direct Deposit to Avoid Monthly Fee	**43%**	of checking accounts with a monthly fee waived that fee if the customer had a recurring direct deposit.
Interest	**None**	
Non-Proprietary Bank ATM Fees	**$2**	per transaction
Non-Sufficient Funds (NSF) Fee	**$35**	per item
Returned Check Fee	**$12**	per declined check written to the customer's account
Stop Payment Fee	**$29**	per item to stop payment for up to six months
Account Closing Fee	**None**	
Other Service Fees	**40**	the median number of additional service fees, ranging from $1.50 to $175.00
OVERDRAFT OPTIONS		
Overdraft Penalty Fee	**$35**	per item covered by bank advance
Maximum Number of Overdraft Penalty Fees per Day	**4**	
Extended Overdraft Penalty Fee	**$25**	every seventh day the account is overdrawn
Overdraft Transfer Fee	**$10**	per transfer from linked savings account, line of credit or credit card
No Overdraft Service for Point-of-Sale (POS) Debit and ATM Transactions (Default Option)		If a customer chooses not to opt in to any overdraft service for these transactions, those that would cause an overdraft will be declined at no cost.
PROCESSING POLICIES		
Posting Order* (The order in which deposits and withdrawals are processed)	**All**	banks reserved the right to reorder withdrawals from highest to lowest for all their accounts.
	52%	of accounts reserve the right to post withdrawals before deposits.
Deposit Hold Policy (How soon funds are available after they are deposited)		• Cash deposit with teller/ATM: Same business day • Check deposit with teller/ATM: Next business day • Direct deposit/wire transfer: Same business day *A "business day" is a non-holiday weekday. The end of a business day varies by bank and by branch, but it is no earlier than 2:00 p.m.*
DISPUTE RESOLUTION		
Dispute Resolution Restrictions	**100%**	of accounts restricted customers' rights to settle legal disputes.
	71%	of accounts had mandatory arbitration agreements.
	12%	of accounts might have allowed customers to take the bank to court but required the customer to pay any "loss, costs, and expenses" the bank incurs.

Note: Data represent 265 checking accounts offered by the 10 largest American banks by deposit, which collectively hold nearly 60 percent of all deposits in the United States as of October 2010. See Appendix A for an explanation of these fees and terms. All numbers are medians and all text represents the most common versions of important account provisions.
*As of the publication date, a limited number of banks have indicated they will no longer reorder some transactions for at least a portion of their accounts.

CONCLUSION

Pew's research shows that it is exceedingly difficult for an average American to find the basic information needed to either select a checking account or to responsibly manage his or her existing account. Assembling information from over 100 pages of disclosure materials represents a daunting task, even for the most financially savvy consumer. Such deficiencies call for action that requires depository institutions to disclose fully and clearly key checking account terms, policies, and fees in a concise, consolidated format.

Furthermore, consumers must be provided with complete and unbiased information in regards to overdraft options. Accountholders should not be subjected to unrestrained overdraft fees or to hidden practices that maximize overdrafts. Overdraft fees, like other penalty fees, should be responsible and proportional to the bank's cost. Posting order should be objective, neutral, and clearly disclosed, and should not be used to maximize overdraft fees. Finally, the CFPB, in its study of binding arbitration clauses, should include a thorough examination of clauses that purport to make accountholders liable for the bank's costs regardless of the outcome of the case.

The free market system is predicated on the idea of competition. Increased disclosure, presented in an understandable format, helps create a better-functioning marketplace by allowing consumers to compare prices and features. Potential customers have the opportunity to preview terms and conditions for some financial products. For example, credit cards are required by law to disclose key terms and conditions in an easy-to-read format (the Schumer Box) before a potential customer applies for a card. Similarly, mortgage originators are required to provide families considering the purchase of a home with a good faith estimate.

We encourage similar transparency in checking accounts that will stimulate a healthier marketplace for consumers and banks alike. Amending and simplifying this process is essential for competition to thrive.

POLICY RECOMMENDATIONS

Pew recommends the following policy solutions to address the findings of our study. While industry can make these changes voluntarily, policy makers should create a level playing field.

DISCLOSURE

Policy makers should require depository institutions to provide information about checking account terms, conditions, and fees in a concise, easy-to-read format, similar to the Schumer Box used for credit cards. Pew has developed a disclosure box (Figure 2) as a model for providing such information to consumers.

OVERDRAFT OPTIONS

Policy makers should require depository institutions to provide accountholders with clear, comprehensive pricing information for all available overdraft options when a customer is considering opting in to a program so that the customer can make the best choice among overdraft options, including choosing not to opt in for any overdraft coverage.

OVERDRAFT FEES

Policy makers should require overdraft penalty fees to be reasonable and proportional to the bank's costs in providing the overdraft loan. Furthermore, we suggest that regulators monitor overdraft transfer fees and impose similar reasonable and proportional requirements on them if it appears that they are becoming so disproportionate as to suggest that they have become penalty fees as well.

PROCESSING OF DEPOSITS AND WITHDRAWALS

Policy makers should require depository institutions to post deposits and withdrawals in a fully disclosed, objective and neutral manner that does not maximize overdraft fees, such as in chronological order.

DISPUTE RESOLUTION

The Consumer Financial Protection Bureau, in its study of arbitration agreements, should examine the prevalence of binding arbitration clauses, of fee-shifting provisions, and of "loss, costs, and expenses" clauses in checking accounts and assess whether such provisions prevent consumers from obtaining relief.

APPENDIX A: EXPLICATION OF TABLE 4—MEDIAN FEES AND MOST COMMON POLICIES FOR CHECKING ACCOUNTS

Checking accounts come with a wide range of fees, terms, and conditions. For the purposes of this report, Pew has grouped all pricing and policy information into four categories that reflect how customers use their accounts:

- Account Opening and Usage
- Overdraft Options
- Processing Policies
- Dispute Resolution

ACCOUNT OPENING AND USAGE

Like any consumer product or service, there are costs to the customer for opening and maintaining checking accounts. The fees and policies assessed in this section are ones that a customer is likely to deal with on a day-to-day basis, even if he or she has not overdrawn his or her account or entered into a legal dispute with his or her bank.

Minimum Deposit Needed to Open Account

Eight out of 10 banks (91 percent of accounts) required some minimum deposit to open an account. Among all of the accounts analyzed, the median minimum deposit needed to open an account was $100. The minimum opening balance ranged from $0 to $500.

Monthly Fee

Eighty-seven percent of examined checking accounts disclosed a monthly maintenance fee that the bank may charge customers at the end of every statement cycle. Only 13 percent of accounts (35 out of 265) had no monthly fee (commonly called "free checking"). The median monthly fee for checking accounts was $8.95. Across all accounts that charged a monthly fee, this fee ranged from $3 to $50.

Bank-Provided Information on Requirements to Waive Monthly Fee

While most checking accounts in our study had a monthly fee, the vast majority of these (228 accounts out of 230) also had provisions that allowed the fee to be waived if the customer met certain requirements. These requirements varied from account to account. The two most common ways for a customer to avoid paying a monthly fee were by maintaining a minimum combined account balance or by having a recurring direct deposit. A few banks allowed customers to not incur such a fee by using electronic banking rather than in-person or paper services.

Minimum Combined Account Balance

Eighty-six percent of the accounts analyzed that had a monthly fee (198 of 230 such accounts) waived that fee if the customer maintained a minimum combined account balance. For this purpose, banks generally look at the combined account balance for all of the customer's deposits, loans, and investment balances with that bank. Depending on the institution and the particular checking account, this balance can include a customer's checking account, savings account, mortgage, credit cards, lines of credit, money market account, certificates of deposit, or other accounts. The median minimum combined account balance needed to avoid a monthly fee was $2,500. The lowest instance of this requirement was $100, and the highest instance was $100,000.

Recurring Direct Deposit

A recurring direct deposit is an electronic ACH transfer of funds into a consumer's account at least once every statement cycle. Examples include payroll checks or benefits such as Social Security. Of the 230 checking accounts studied that had a monthly fee, 100 of them (43 percent) waived their monthly fees if the customer had a recurring direct deposit. Two banks (33 percent of accounts with a monthly fee) disclosed a required minimum direct deposit dollar amount in order to qualify for the waiver. The median direct deposit required by these banks was $100, with a range of $25 to $250 among their accounts.

Other Ways to Avoid Monthly Fees

While maintaining a minimum combined account balance or having a recurring direct deposit were the two most common ways that banks allowed a customer to avoid a monthly fee, several accounts had other unique requirements for waiving the charge. In the accounts in our study, these focused on the customer's use of electronic banking mechanisms rather than in-person or paper-based services.

For example, customers who have Bank of America's eBanking accounts can avoid a monthly fee if they use only self-service options (ATM, online, mobile) for deposits and withdrawals and receive only paperless statements. Citibank disclosed that it will waive the Basic Checking monthly fee if the customer makes at least five qualifying transactions per statement cycle, with "qualifying transactions" defined as POS debit; check debit; bill payment via telephone, online, or mobile banking; auto deduction/ACH payment; or an ATM cash withdrawal.

Interest

Although traditionally one distinguishing difference between checking and savings accounts was that the latter allowed the customer to accrue interest on his or her deposits, a large number of checking accounts examined also offered the customer the opportunity to receive interest on his or her deposits. In fact, 109 out of 265 checking accounts studied (41 percent) were interest bearing.

Fees at Non-Proprietary ATMs

All banks studied allowed their checking account customers to use their banks' own ATMs without charging a fee for almost all transactions except for an account statement request. Banks did not disclose if the report is provided as a printed copy or an on-screen display. However, eight out of 10 banks and 90 percent of accounts charged their customers a fee for using an out-of-network ATM. The median fee for using another bank's ATM was $2. For those banks that charged this fee, it ranged from $2 for some accounts to $2.50 for other accounts. The non-proprietary ATM fee charged to the customer by his or her bank is in addition to any fees charged to the customer by the owner of that non-proprietary ATM.

Returned Check Fee

If a customer attempts to deposit a check into his or her checking account and the check does not clear, all of the banks studied charged the depositing customer a returned check fee. The median returned check fee for all accounts was $12, with a range of $10 to $40 among all accounts.

Stop Payment Fee

If a customer asks his or her bank to halt the processing of a check written by the customer (and the resulting withdrawal of funds from his or her checking account), the bank will generally do so for a period of time and charge the customer a stop payment fee. The median

stop payment fee was $29. For those accounts that charge a stop payment fee (92 percent of accounts), the fee ranged from $25 to $50. The stop payment orders for nine out of 10 banks (97 percent of accounts) lasted six months but were renewable for a repeat fee.[83] The one remaining bank's stop payment period was one year.

Account Closing Fee

Six out of the 10 banks examined (representing 38 percent of accounts) charged a fee if a customer closed his or her account within a specified and relatively brief period of time after the initial opening of the account. Among the banks charging a fee, this fee ranged from $20 to $30, and the period of time ranged from within 90 to 180 days of opening the account.

Other Service Fees

While this report considers nine different fees in depth, it should be noted that checking accounts have other associated fees. The median account had 40 other service fees beyond those discussed here, while some accounts had as few as seven and some had as many as 54. These fees, usually disclosed on fee schedule documents, ranged in cost from $1.50 to $175. They included such diverse charges as the "Staff Assisted Requests for Any Item or Statement Copy" fee, the "Foreign Check Clearing Services for up to US $5,000 Drawn from Canadian Banks" fee, the "Online External Transfer to Your Accounts at Other Financial Institutions" fee and the "Large Amount of Coins Deposited" fee.

APPENDIX B: METHODOLOGY

TABLE 5: List of Banks Reviewed by Pew

Bank	Percentage of Total U.S. Deposits Held by Bank	Value of Deposits in Bank
Bank of America	13.3%	$976,953,347,000
JP Morgan Chase	12.1%	$887,805,000,000
Wells Fargo	11.1%	$816,409,000,000
Citigroup	11.1%	$813,951,000,000
U.S. Bank	2.5%	$183,123,000,000
PNC	2.4%	$178,875,108,000
TD Bank	1.7%	$128,177,056,000
Sun Trust	1.6%	$118,668,103,000
Capital One	1.6%	$117,331,543,000
HSBC	1.6%	$116,679,948,000
Total	59%	$4,337,973,105,000

Note: Data on deposit volume are from Payments Source, a self-reported banking industry database, and are current as of October 6, 2010. The table shows the percentage of all deposits in the United States held by these 10 banks and the value of those deposits.

DATA COLLECTION

Through this and future research documenting checking account practices, the Pew Health Group's Safe Checking in the Electronic Age Project seeks to provide information and recommendations to support the development of sound policy, regulatory, and business decisions.

Data in this report are based on an analysis of checking account agreements, Web page documentation, and fee schedules posted online by the largest 10 banks as identified by their holding companies' deposit volume as of October 2010. For instance, Citigroup is listed as one of the top 10 institutions by deposit volume, and Pew's research staff identified its affiliate bank, Citibank, for data collection. All deposit volume data come from Payment Source, a self-reported banking industry database. These banks account for 59 percent of all deposit volume. Information regarding the individual bank's retail checking line deposit volume was unavailable. Pew researchers collected data in October 2010.

Due to state variations in many checking account terms and fees, Pew researchers identified 265 distinct accounts offered by the largest 10 banks.

Information about checking accounts' fees, terms, and conditions is spread across various bank Web pages and documents, many of which are not readily available. When trying to find checking account information and account documents—such as an account agreement, account agreement addendum, or fee schedule—for each account, the avenues of investigation that follow were tried in order until the data were found. Pew researchers determined that the following ranking of data locations represented a progression from most to least accessible location of information.

1. Visiting the "Account Web Page" (the main page for an account on a bank's Web site)
2. Following any links to documents "clickable" from the account Web page
3. Browsing the bank's Web site for other informative pages
4. Using selected keywords to search the bank's Web site for account documents
5. Calling a bank's main customer service line to request account documents by fax or mail
6. Calling a local bank branch (closest to Pew) to request account documents by fax or mail
7. Visiting that local bank branch in person to acquire copies of account documents
8. Obtaining information from an online or telephone bank representative (not in writing)

Pew researchers collected and saved all account documents and information over a two-week period in October 2010.

CLASSIFICATION OF DATA BASED ON SOURCE

The varying methods outlined above for obtaining information about the checking accounts examined by Pew form the basis for how Pew classified each individual piece of data.

In this report, there are nine data source categories. The categories are:

- Data found on account Web page
- Data found in fee schedule clickable from account Web page
- Data found in account agreement or addendum clickable from account Web page
- Data found on a separate page of the bank's Web site
- Data found in fee schedule available only through search of bank's Web site
- Data found in account agreement or addendum available only through search of bank's Web site
- Data found in fee schedule available only by visiting bank branch
- Data found in account agreement available only by visiting bank branch
- Data not available in writing either on a document or on the bank's Web site

ACCOUNT SELECTION

Each checking account that Pew examined had the following characteristics identifying it as a distinct account:

- Bank offering the account
- Name of account
- State(s) where account agreement was valid
- State(s) where account agreement addendum was valid
- State(s) where fee schedule was valid
- State(s) where additional account document(s) were valid

For example, although there are only three checking accounts listed on Bank of America's checking accounts home page—Advantage with Tiered Interest, eBanking, and MyAccess Checking—Bank of America actually has 38 checking accounts in this study because the terms and conditions of each type of checking account are not the same in all 50 U.S. states. Account documents that are valid in one state or group of states are inaccurate and invalid in other states. Another incidence in which checking accounts were differentiated involves a situation in which the same account agreement might apply in a particular group of states, but those checking accounts might not share the same fee schedule. Examples such as these required more complicated sorting to make sure that each checking account identified by Pew used only one set of account documents. This system resulted in an accurate count of the number of wholly unique checking accounts offered by the 10 largest U.S. banks.

In the simplest instances, some banks had only one version of each account document. For other banks, there were variations in their account documents between states or groups of states, but these variations occurred uniformly across all account documents. In other words, if there were three variations of an account agreement addendum in which each represented a third of the U.S. states, there were also three variations of a fee schedule that corresponded exactly to the state groups in one of the account agreement addendum's variations.

In the most complicated situations, the groups of states in various iterations of one account document did not match the groups of states represented in the variations of another account document. For example, a hypothetical checking account might have an account agreement addendum with two variations—one for CT, MA, NJ, NY, PA ("A") and one for DE, MD, NH, RI, VT ("B"). At the same time, its fee schedule might have two different variations—one for CT, MA, NH, RI, VT ("1") and one for DE, MD, NJ, NY, PA ("2").

To resolve this, Pew researchers created a table to sort out the wholly unique accounts. This table, an example of which appears below, would sort first by the account agreement addendum area ("A" or "B") and then by the fee schedule area ("1" or "2"). This arrangement made it easy to see in which states a checking account shared the same version of both documents; in other words, researchers were able to determine in which states the variations of the account were identical and thus suitable to be recognized by Pew in this study as the same account.

In the sorting example shown in Table 6, account document variations produced four distinct versions of a generic checking account.

TABLE 6: Example of How Unique Accounts Were Sorted

States	Account Agreement Addendum Area	Fee Schedule Area	Final Account Groupings
CT	A	1	Generic Account CT, MA
MA	A	1	
NJ	A	2	Generic Account NJ, NY, PA
NY	A	2	
PA	A	2	
NH	B	1	Generic Account NH, RI, VT
RI	B	1	
VT	B	1	
DE	B	2	Generic Account DE, MD
MD	B	2	

ENDNOTES

1. Federal Deposit Insurance Act, 12 U.S.C.S. § 1821.

2. Check Clearing for the 21st Century Act (Check 21), 12 U.S.C.S § 5001 et seq.

3. See, e.g., In re Checking Account Overdraft Litig., 734 F. Supp. 2d 1279 (S.D. Fla. 2010).

4. Press Release, Moebs Services, Overdraft Fee Revenue Drops to 2008 Levels for Banks and Credit Unions, (Sept. 15, 2010), available at http://www.moebs.com/Pressreleases/tabid/58/ctl/Details/mid/380/ItemID/193/Default.aspx.

5. "Most banks (73.0 percent) with automated overdraft programs established overdraft coverage limits for customers in their written policies, consistent with the bank's lending policies. However, large banks were more likely than small banks to specify coverage limits on automated over draft programs in their written policies. About 83 percent of large banks established credit limits, compared with 65.2 percent of small banks. Automated overdraft coverage limits stipulated in written policies ranged from $85 to $10,000, and the median credit limit was $500. As with per-item fees, overdraft coverage limits established in policies also tended to be lower for small banks." Federal Deposit Insurance Corporation, "Study of Bank Overdraft Programs" (November 2008) p 16, available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

6. Expedited Funds Availability Act, 12 U.S.C.S. § 4002 (regulating when deposited funds must be made available), 12 U.S.C.S. § 4004 (providing for disclosure to customers of a bank's funds availability policies). The FDIC and OTS have issued guidance to the financial institutions that they oversee regarding best practices and admonishing financial institutions for manipulating transaction order, but these guidelines fall short of binding federal regulation. Federal Deposit Insurance Corporation Supervisory Guidance for Overdraft Protection Programs and Consumer Protection FIL-81-2010 (Nov. 24, 2010); Office of Thrift Supervision Guidance on Overdraft Protection Programs, 70 Fed. Reg. 8428 (Feb. 18, 2005), available at http://files.ots.treas.gov/480028.pdf.

7. The "loss, costs, and expenses" clauses are found in the account agreements of four banks: PNC Bank, "Disputes Involving Your Account," in *Account Agreement for Personal Checking, Savings, and Money Market Accounts*, 10 (2010); TD Bank, "Indemnity," in *Personal Deposit Account Agreement*, 20 (June 2010); SunTrust, "Adverse Claims," in *Rules and Regulations for Deposit Accounts*, 20 (June 2010); HSBC, "Reimbursement of Bank in the Event of a Dispute," in *Rules for Deposit Accounts*, 27 (June 2010).

8. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1028, 12 U.S.C.S. § 5518.

9. 12 C.F.R. § 226.5a.

10. Brian K. Bucks, Arthur B. Kennickell, Traci L. Mach & Kevin B. Moore, "Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances," Federal Reserve Board - Division of Research and Statistics, February 2009, available at http://www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf.

11. Federal Deposit Insurance Act, 12 U.S.C.S. § 1821.

12. The Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009, 111 Pub. L. No. 24, 15 U.S.C.S. § 1665d.

13. 12 C.F.R. §226.5a; Senator Charles E. Schumer, http://www.schumer.senate.gov/new_website/consumers.cfm.

14. Federal Deposit Insurance Act, 12 U.S.C.S. § 1811 et seq.; Truth in Savings Act, 12 U.S.C.S. § 4301 et seq.; Electronic Fund Transfer Act, 15 U.S.C.S. § 1693 et seq.; 12 C.F.R. § 205.1 et seq.; 12 C.F.R. § 230.1 et seq. Following implementation of the Wall Street Reform and

Consumer Protection Act on July 21, 2011, the Consumer Financial Protection Bureau will also be empowered to reduce the risks to consumers in checking accounts (Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1011 et seq., 12 U.S.C.S. § 5491 et seq.).

15. Truth in Savings Act, 12 U.S.C.S. §§ 4302-4304; Electronic Fund Transfer Act, 15 U.S.C.S. §§ 1693b-1693d; 12 C.F.R. §§ 205.4, .7-.9, .17, 230.3-.6, .11.

16. 12 C.F.R. 205.11; U.C.C. § 4-402 (2005).

17. Expedited Funds Availability Act, 12 U.S.C.S. § 4002.

18. 12 C.F.R. § 229.12; Proposed Rule, Availability of Funds and Collection of Checks, 76 Fed. Reg. 16862 (March 25, 2011).

19. Federal Trade Commission Act, 15 U.S.C.S. § 57a(f). The Board of Governors of the Federal Reserve issued regulations under the FTCA, including restrictions on unfair credit contract provision, misrepresentations to cosigners, and charging late fees for the untimely payment of late fees. 50 Fed. Reg. 16695 (April 29, 1985). Subsequently, the FTCA rules in Federal Reserve Board Regulation AA were reserved and replaced in Regulation Z by rules implementing the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009, 111 Pub. L. No. 24, 15 U.S.C.S. § 1601 et seq.; 12 C.F.R. § 226.1 et seq.; 75 Fed. Reg. 7658 and 7926 (Feb. 22, 2010). Additionally, the Office of Thrift Supervision and National Credit Union Administration have limited their current regulation of unfair and deceptive practices to consumer credit contracts. 12 C.F.R. § 535.1 et seq.; 12 C.F.R. § 706.1 et seq. (these were not affected by the CARD Act). Agencies empowered to take action against unfair and deceptive acts or practices include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. Following implementation of the Wall Street Reform and Consumer Protection Act on July 21, 2011, the Consumer Financial Protection Bureau will also be empowered to take action against unfair, deceptive, and abusive acts or practices. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1031, 12 U.S.C.S. § 5531.

20. For a list of the roles of the various federal banking regulators, please see: U.S. Securities and Exchange Commission, "Banking Regulators," available at http://www.sec.gov.

21. Federal Trade Commission Act, 15 USCS § 57a(f).

22. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1031, 12 U.S.C.S. § 5531.

23. Id. § 1032, 12 U.S.C.S. § 5532. The Act requires that the disclosure information provide consumers with the ability to understand the costs, benefits, and risks associated with the product or service. The Act specifically allows the CFPB to include in its rulemaking the use of a model form that includes plain language, clear format and design, and succinct information. Any financial institution that uses the model form will be deemed to be in compliance with the CFPB's disclosure requirements.

24. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1031(d), 12 U.S.C.S. § 5531(d).

25. The proliferation of so many checking accounts among only 10 banks is largely due to state-by-state variations for each type of checking account a bank offered. For example, although Bank of America only offered three types of checking accounts online in October 2010—Advantage with Tiered Interest, eBanking, and MyAccess Checking—they actually had 38 unique checking accounts in this study because the terms and conditions for each of those three types of checking accounts are not the same in all 50 states.

26. See, e.g., In re Checking Account Overdraft Litig., 734 F. Supp. 2d 1279 (S.D. Fla. 2010).

27. Payments Source Database, "Total Deposits" (October 2010).

28. Truth in Savings Act, 12 U.S.C.S. § 4303(a), (d).

29. Id. § 4308 (providing authority to issue regulations and model forms); § 4309 (providing authority to enforce compliance with TISA requirements). See also, id. § 4303(e) (noting that disclosures must be clear, in plain language, and readily understandable).

30. Electronic Fund Transfer Act, 15 U.S.C.S. § 1693c(a).

31. Id. §§ 1693o, 1693b(b).

32. 12 C.F.R. § 230.4(b)(3)(i)(A), (4).

33. Id. § 230.3(a).

34. 12 C.F.R. § 230 Supp. I 230.3(a)(1)(i), (iv).

35. Id. § 230.3(a)(1)(ii)-(iii).

36. 12 C.F.R. § 205.7(b)(1), (4)-(5).

37. Id. § 205.7(a) (regulation requires disclosure "at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made…").

38. Id. § 205.17(b)(1), (c).

39. Protecting Consumers from Abusive Overdraft Fees: The Fairness and Accountability in Receiving Overdraft Coverage Act Hearing, Before the S. Comm. on Banking, Housing, and Urban Affairs, 111th Congress (Nov. 17, 2009) (testimony of John P. Carey, Citigroup North America Consumer Banking), available at http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=5fc3d6c8-2f17-4f94-a30f-37d28a69e6d0; Andrew Martin, "Bank of America to End Debit Overdraft Fees," *N.Y. Times*, March 9, 2010, available at http://www.nytimes.com/2010/03/10/your-money/credit-and-debit-cards/10overdraft.html.

40. Bank of America, Deposit Agreement and Disclosures—Effective June 19, 2010—Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia and Washington D.C., available at https://www3.bankofamerica.com/deposits/odao/popup/disclosure_popup.cfm?template=dad&RequestTimeout=300; Citibank, *Client Manual—Consumer Accounts—Including Our Privacy Notice—U.S. Markets—Effective July 1, 2010*, available at https://online.citibank.com/JRS/popups/ao/Client_Manual_20100701.pdf.

41. 12 C.F.R. § 204.2(d)(2). For overdraft transfers that link to a line of credit or credit card, the accountholder will pay a minimal amount of interest in addition to the overdraft transfer fee.

42. 12 C.F.R. § 205.17(a), (b), (d)(5).

43. 12 C.F.R. § 205 App. A-9. The current model disclosure issued by the Federal Reserve only recommends the following statement: "We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, please ask us about these plans."

44. Federal Deposit Insurance Corporation, "Study of Bank Overdraft Programs" (November 2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

45. Banks typically assess an extended overdraft fee (explained in a subsequent paragraph) after a balance is negative for seven days.We use this seven-day period in our calculation for this reason.

46. 12 C.F.R. § 204.2(d)(2).

47. "Excessive overdraft fees are analogous to loan flipping," in *Comments of Center for Responsible Lending, Consumer Federation of America, National Consumer Law Center (on behalf of its low-income clients) and Consumer Action, Consumers Union, National Association of Consumer Advocates, U.S. PIRG, on FDIC's Proposed Overdraft Payment Supervisory Guidance FIL 47 2010, (September 27, 2010), 10.*

48. Dennis Campbell, Asis Martinez Jerez & Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures* (Harvard Business School, June 6, 2008). See also Michael S. Barr, Financial Services, *Savings and Borrowing Among Low- and Moderate-Income Households: Evidence from the Detroit Area Household Financial Services Survey* (University of Michigan Law School, March 30, 2008) (finding that among those surveyed who formerly had a bank account, 70% chose to close the account themselves, citing moving, worrying about bouncing checks, and excessive fees as their reasons for closing the account. The remaining formerly banked, 30%, reported that their bank closed their account; the primary reason was bounced checks and overdrafts).

49. Federal Deposit Insurance Corporation Supervisory Guidance for Overdraft Protection Programs and Consumer Protection, FIL-81-2010 (Nov. 24, 2010).

50. 12 C.F.R. § 227.1 et seq.; 12 C.F.R. § 535.1 et seq.; 12 C.F.R. § 706.1 et seq.

51. Id.

52. Federal Deposit Insurance Corporation Supervisory Guidance for Overdraft Protection Programs and Consumer Protection, FIL-81-2010 (Nov. 24, 2010).

53. Office of Thrift Supervision Guidance on Overdraft Protection Programs, 70 Fed. Reg. 8428 (Feb. 18, 2005), available at http://files.ots.treas.gov/480028.pdf.

54. Center for Responsible Lending, "Overdraft Loans: Survey Finds Growing Problem for Consumers" (April 24, 2006), available at http://www.responsiblelending.org/overdraft-loans/research-analysis/ip013-Overdraft_Survey-0406.pdf; Federal Deposit Insurance Corporation, "Study of Bank Overdraft Programs" (November 2008), available at http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

55. Id.

56. Pew Health Group, "Unbanked by Choice: A look at how low-income Los Angeles households manage the money they earn" (July 2010), available at http://www.lafla.org/pdf/Unbanked_PEW2010.pdf.

57. *The Overdraft Protection Act of 2009: Hearing Before H. Comm. on Financial Services*, 111th Cong. 7-9 (2009) (statement of Nessa Feddis, VP and Senior Counsel, American Bankers Ass'n).

58. The Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009, 111 Pub. L. No. 24, 15 U.S.C.S. § 1665d(a).

59. Id.

60. 12 C.F.R. § 226.52(b).

61. Due to rapid developments related to bank re-ordering practices, Pew researchers continued to monitor changes for these practices until publication of this report in late April 2011.

62. Chase, *Account Rules and Regulations—Your Guide To: Checking, Savings, Certificates of Deposit, Overdraft Protection, Privacy Notice* (Jan. 1, 2011).

63. Dickler, Jessica, "Good news on overdrafts! Citi will pay small checks first," *CNN Money*, Apr. 4, 2011, available at http://money.cnn.com/2011/04/04/pf/citi_check_cashing/index.htm.

64. A few state laws address the issue, mostly with a "good faith" requirement.

65. Federal Deposit Insurance Corporation Supervisory Guidance for Overdraft Protection Programs and Consumer Protection, FIL-81-2010 (Nov. 24, 2010).

66. Gutierrez v. Wells Fargo Bank, 730 F. Supp. 2d 1080, 1114 (N.D. Cal. 2010) (Wells Fargo's expert witness is quoted as follows: "Even if they were to read, word for word…some of those lengthy documents, such as the account agreement…it would be impossible for [customers] to predict the exact balance [of their checking accounts] at any particular point in time.").

67. Prior to Gutierrez, 730 F. Supp. 2d 1080, numerous lawsuits challenged high-to-low posting order policies that increased the number of overdraft and NSF fees customers incurred. These lawsuits were brought under state contract and consumer protection laws. See, e.g., Hill v. St. Paul Fed. Bank for Savings, 329 Ill. App. 3d 705 (Ill. App. Ct. 2002) (consumer fraud, UCC, and deceptive business practices claims failed); Hassler v. Sovereign Bank, 644 F. Supp. 2d 509 (D. N.J. 2009) (consumer fraud, unjust enrichment, and contract claims failed). Regardless of the legal theory presented, all of these plaintiffs failed in their lawsuit. Since the $203 million judgment was handed down in Gutierrez, several banks have settled similar class action suits for millions of dollars. See, e.g., Trombley v. National City Bank, 2011 U.S. Dist. LEXIS 2509 (D.D.C. 2011). In addition, a multidistrict litigation case is pending in the Southern District of Florida. This case is a consolidation of many class action suits from around the country challenging various banks' high-to-low posting order policies. In total, 31 banks are or were defendants, including 27 of the 44 largest financial institutions by deposit volume and all ten Pew analyzed. In re Checking Account Overdraft Litig., 2010 U.S. Dist. LEXIS 85494 (J.P.M.L. 2010).

68. E.g., In re Checking Account Overdraft Litig., 694 F. Supp. 2d 1302 (S.D. Fla 2010).

69. *The Overdraft Protection Act of 2009: Hearing Before H. Comm. on Financial Services*, 111th Cong. 7-9 (2009) (statement of Nessa Feddis, VP and Senior Counsel, American Bankers Ass'n). See also, Gutierrez v. Wells Fargo Bank, 730 F. Supp. 2d 1080, 1107 (N.D. Cal. 2010) ("Some banks argued that most customers prefer high-to-low posting because it results in their largest bills being paid first.").

70. In his opinion, the judge in Gutierrez found that "the only motives behind the challenged practices were gouging and profiteering" and high to low processing is "a trap—a trap that would escalate a single overdraft into as many as ten through the gimmick of processing in descending order. It then exploited that trap with a vengeance, racking up hundreds of millions off the backs of the working poor, students, and others without the luxury of ample account balances." Gutierrez v. Wells Fargo Bank, 730 F. Supp. 2d 1080, 1112, 19 (N.D. Cal. 2010).

71. See, e.g., Larin v. Bank of America, 725 F. Supp. 2d 1212 (S.D. Cal. 2010); Montgomery v. Bank of America, 515 F. Supp. 2d 1106 (C.D. Cal. 2007).

72. Gutierrez v. Wells Fargo Bank, 730 F. Supp. 2d 1080 (N.D. Cal. 2010). A federal court in Missouri also rejected the preemption argument in September 2010. Joseph v. Commerce Bank N.A., 2010 U.S. Dist. LEXIS 97664 (W.D. Mo. 2010).

73. Gutierrez, 730 F. Supp. 2d 1080, 1124.

74. In re Checking Account Overdraft Litig., 734 F. Supp. 2d 1279 (S.D. Fla. 2010).

75. The Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009, 111 Pub. L. No. 24, 15 U.S.C.S. § 1665d(e); 12 C.F.R. 226.52(b).

76. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1032(d), 12 U.S.C.S. § 5532(d).

77. David S. Schwartz, "Mandatory Arbitration and Fairness," 84 *Notre Dame Law Review* 3 (June 1, 2009); Amanda Perwin, "Mandatory Binding Arbitration: Civil Injustice by Corporate America" (August 2005), Center for Justice & Democracy: New York, available at http://www.centerjd.org/archives/issues-facts/ArbitrationWhitePaper.pdf.

78. Federal Arbitration Act, 9 USC § 2; Tillman v. Commer. Credit Loans, Inc., 655 S.E.2d 362, 370 (N.C. 2008). See Johnson v. Keybank Nat'l Ass'n (In re Checking Account Overdraft Litig.), 718F. Supp. 2d 1352, 1358 (S.D. Fla. 2010).

79. In re Checking Account Overdraft Litig., 694 F. Supp. 2d 1302 (S.D. Fla 2010); Johnson v. Keybank Nat'l Ass'n (In re Checking Account Overdraft Litig.), 718 F. Supp. 2d 1352, 1358 (S.D. Fla 2010).

80. Big Lots Stores v. Luv N' Care, 302 Fed. Appx. 423, 426 (6th Cir. 2008); Miles v. The N.Y. State Teamsters Conf. Pension & Ret. Fund Employee Pension Benefit Plan, 698 F.2d 593, 601-02 (2d Cir. 1983); Southwest Marine, Inc. v. Campbell Indus., 796 F.2d 291, 292-93 (9th Cir. 1986) (Noonan, J., concurring).

81. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203, § 1028(a), 12 U.S.C.S. § 5518(a).

82. Id. § 1028(b), 12 USCS § 5518(b).

83. U.C.C. § 4-403 (2005) "(b) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective." Available at http://www.law.cornell.edu/ucc/4/article4.htm#s4-303.

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The Safe Checking in the Electronic Age Project aims to restore transparency, fairness, responsibility and free market principles to one of the most common consumer financial products—the checking account.

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