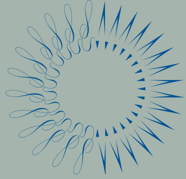

PEW
HEALTH GROUP

POLICY RECOMMENDATIONS

SAFE CHECKING IN THE ELECTRONIC AGE

FEATURES OF A SAFE CHECKING ACCOUNT

INTRODUCTION

In April 2011, the Pew Health Group's Safe Checking in the Electronic Age Project released *Hidden Risks: The Case for Safe and Transparent Checking Accounts*. This report examines the terms and conditions of over 250 distinct types of checking accounts offered online by the 10 largest banks in the United States as of October 2010. At that time, these banks held nearly 60 percent of all deposit volume nationwide.

Pew's research shows that it is exceedingly difficult for an average American to find the basic information needed either to select a checking account or to responsibly manage his or her existing account.

Reforms should be implemented to ensure that checking accounts have the features that follow.

DISCLOSURES

Depository institutions should be required to provide information about checking account terms, conditions and fees in a concise, easy-to-read format. Pew has developed a model disclosure box that provides this information.

- Disclosures are critical for consumers to make informed decisions, but the information needs to be presented in a format that is clear and understandable. Currently, the median length of checking account disclosure documents is 111 pages. A simple one-page disclosure box can convey key terms and conditions with clarity so that consumers can compare products and make purchasing decisions that best meet their needs.

- 78 percent of all American checking accountholders say that requiring banks to provide a one-page summary of information about their checking accounts' terms, conditions and fees would be a positive change, while only 4 percent say this would be a negative change, according to a Pew-commissioned July 2011 survey.[1]

OVERDRAFT OPTIONS

Depository institutions should be required to provide accountholders with clear, comprehensive pricing information for all available overdraft options so that a customer can make the best choice among overdraft options, including choosing not to provide affirmative consent—or "opt in"—for any overdraft coverage.

- Currently, financial institutions offer two main categories of overdraft products. Overdraft penalty plans entail short-term advances made by the bank for a fee to cover an overdraft. Overdraft transfer plans involve a transfer from a customer's existing savings account, credit card or line of credit to pay for any overdrafts. As of August 2010, consumers also have a third option—not opting-in to overdraft coverage. Under new rules issued by the Federal Reserve, banks are prohibited from charging overdraft penalty fees on ATM and point-of-sale debit transactions unless the consumer has affirmatively opted in.[2]
- 83 percent of all American checking accountholders say requiring banks to provide a summary of information about the overdraft options offered, how they work and what the fees are would be a positive change, while only 2 percent say this would be a negative change, according to a Pew-commissioned July 2011 survey.

OVERDRAFT FEES

Overdraft penalty fees should be reasonable and proportional to the bank's costs in providing the overdraft loan. Regulators should 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.

- Pew found that the median overdraft penalty fee was $35. If this fee is applied to the median overdraft amount of $36 with a repayment period of seven days, the annual percentage rate on the typical overdraft would be over 5,000 percent.[3]
- Overdraft fees will cost American consumers an estimated $38 billion in 2011—an all-time high.[4] These fees put many at risk for loss of their checking accounts. Unpredictable and repeated overdraft fees pose particular dangers to those who maintain smaller balances with less of a cushion to absorb unexpected charges.[5]
- 69 percent of all American checking accountholders say limiting overdraft fees based on how much it costs the bank to provide the overdraft would be a positive change, while only 11 percent say this would be a negative change, according to a Pew-commissioned July 2011 survey.

PROCESSING POLICIES

Depository institutions should be required to post deposits and withdrawals in a fully disclosed, objective and neutral manner that does not maximize overdraft fees, such as in chronological order.

- Currently, banks are allowed to 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.
- Approximately 40 percent of deposit volume is no longer subject to reordering. The Federal Deposit Insurance Corporation has issued guidance to member banks requiring them to review their checking procedures to "ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order."[6] Additionally, Chase, Citibank and Wells Fargo have disclosed that they will generally no longer reorder certain transactions from largest to smallest, although these banks retain the right to change their account terms and conditions—including transaction posting order—at any time and for any reason.[7]
- 70 percent of all American checking accountholders say requiring banks to process transactions in the order in which they occur, as opposed to processing them from highest dollar amount to lowest dollar amount, would be a positive change, while only 13 percent say this would be a negative change, according to a Pew-commissioned July 2011 survey.

DISPUTE RESOLUTION

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

- More than 80 percent of accounts examined by Pew contain either binding mandatory arbitration agreements or fee-shifting 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. In the Wall Street Reform and Consumer Protection Act, Congress required the newly created CFPB to study mandatory arbitration in contracts for financial products and services and, based on the findings, authorized the bureau to write new rules limiting these clauses.[8]
- 49 percent of all American checking accountholders say that allowing customers to sue their bank would be a positive change, while 25 percent say this would be a negative change, according to a Pew-commissioned July 2011 survey.

ENDNOTES

1. Polling data are from a Pew-commissioned national survey of 805 checking accountholders conducted July 5–10, 2011, by Hart Research Associates (D) and McLaughlin & Associates (R).

2. 12 C.F.R. § 205.17(b)(1), (c).

3. Federal Deposit Insurance Corporation, *Study of Bank Overdraft Programs*, (Nov. 2008), available at www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf. Seven days is the median length of time before a second fee—an extended overdraft penalty fee— is assessed for an unpaid overdraft and overdraft penalty fee.

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

5. 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 percent chose to close the account themselves, citing reasons such as moving, worrying about bouncing checks and excessive fees. The remaining formerly banked, 30 percent, whose accounts were closed by their banks, gave bounced checks and the subsequent overdraft fees as the primary reason.).

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

7. Wells Fargo, *California—Consumer Account Addenda* (Apr. 4, 2011) Chase, *Account Rules and Regulations—Your Guide To: Checking, Savings, Certificates of Deposit, Overdraft Protection, Privacy Notice* (Jan. 1, 2011). Citibank, *Client Manual Consumer Accounts—U.S. Markets* (Aug. 1, 2011).

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