



SAFE CHECKING IN THE ELECTRONIC AGE

THE NEED FOR TRANSPARENT AND FAIR BANK DEPOSIT AND WITHDRAWAL PROCESSING POLICIES

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 examined 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 Finding: 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 a checking account with insufficient funds to cover it at that moment. Banks can maximize the number of times an account "goes negative" by substituting the actual chronological order of deposits and withdrawals with a reordered sequence that reduces the account balance as quickly as possible. Posting withdrawals before deposits and posting withdrawals from largest to smallest have the effect of maximizing overdrafts.

Pew's Policy Recommendation: 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. To allow accountholders to track their balances and manage their spending, transactions should be processed in a predictable manner that responsible customers can follow.

As of October 2010, all banks and all accounts in the study reserved the right to process all withdrawals 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, a recent court ruling in *Gutierrez v. Wells Fargo* required Wells Fargo to change its policy on deposit sequencing after finding that, among other legal claims, Wells Fargo's deposit sequencing practice was "unfair" under California law.¹ The table on the following page, drawn from the judge's opinion in the case, illustrates how Wells Fargo reordered Ms. Gutierrez's transactions with the effect of maximizing overdraft fees.

Wells Fargo has stated that it will now process ATM and debit card transactions in chronological order.² Chase has also disclosed that it will no longer reorder certain types of transactions, and Citibank has disclosed that it will "generally" post transactions from smallest to largest dollar amount, which would have the effect of minimizing overdraft fees.³ However, these banks retain the right to change their account terms and conditions—including transaction posting order—at any time and for any reason.

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.

In addition to the above three banks, the Federal Deposit Insurance Corporation's (FDIC) November 24, 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."⁴ As a result of these policy changes by banks and the FDIC, approximately 40 percent of U.S. deposit volume is no longer subject to reordering transactions in a way that maximizes overdraft fee revenue. To create a level playing field for all banks, this practice should be prohibited for all accountholders.

According to a Pew-commissioned poll of U.S. checking accountholders conducted in July 2011, when asked their opinion on 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, which can lead to more overdraft fees⁵

- 70 percent of all American checking accountholders say this would be a positive change, while only 13 percent say this would be a negative change.
- 74 percent of Democrats, 69 percent of those who identify as independents, 69 percent of Republicans and 69 percent of those who identify with the Tea Party say this would be a positive change, while only 10 percent of Democrats, 13 percent of independents, 16 percent of Republicans and 15 percent of Tea Partiers say this would be a negative change.
- 75 percent of those who have opted-in to overdraft coverage for their debit card and 69 percent of those who have not opted-in to overdraft coverage for their debit card say this would be a positive change, while only 15 percent and 12 percent, respectively, say this would be a negative change.

ENDNOTES

1. *Gutierrez v. Wells Fargo Bank*, 730 F. Supp. 2d 1080, 1124 (N.D. Cal. 2010).
2. Wells Fargo, *California—Consumer Account Addenda* (April 4, 2011).
3. 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).
4. Federal Deposit Insurance Corporation Supervisory Guidance for Overdraft Protection Programs and Consumer Protection, FIL-81-2010 (Nov. 24, 2010).
5. 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).