

THE  
**PEW**  
CHARITABLE TRUSTS

# Still Risky:

An Update on the  
Safety and Transparency  
of Checking Accounts

JUNE 2012

The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and stimulate civic life.

The Safe Checking in the Electronic Age Project, a project of The Pew Charitable Trusts, 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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For additional information, visit [www.pewtrusts.org/safechecking](http://www.pewtrusts.org/safechecking)

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# Executive Summary

In this update to *Hidden Risks: The Case for Safe and Transparent Checking Accounts* (April 2011), Pew's Safe Checking in the Electronic Age Project continues its study of checking account terms and conditions to examine both the state of the marketplace and the effect of current regulations. This study revisits and expands on the original research of the 10 largest banks by collecting additional data found online from the 12 largest banks and the 12 largest credit unions (as determined by their domestic deposit volumes).<sup>1</sup> There continue to be key banking practices that put consumers at financial risk and potentially expose them to high and unexpected costs for little benefit.

As 9 out of 10 American adults have checking accounts, which serve as the cornerstone of household financial management, it is imperative that consumers be aware of what these accounts entail.<sup>2</sup> They allow for the deposit of earnings, the ability to pay bills by check and online, and an opportunity to build a relationship with a financial institution that will open the door to more sophisticated financial products and services. Checking accounts provide a safe location for depositing money and let accountholders make financial decisions free from worries about monetary theft or loss. Research shows that those who have a bank account can better weather economic storms and save more money than those who do not.<sup>3</sup> However, there are still risks to the consumer. Indeed, it is estimated that overdraft fees cost Americans \$29.5 billion in 2011.<sup>4</sup>

*Still Risky: An Update on the Safety and Transparency of Checking Accounts* finds the following practices that may harm consumers:

- **Financial institutions do not summarize important policies and fee information in a uniform, concise, and easy-to-understand format that allows customers to compare account terms and conditions.** The median length of bank checking account disclosure statements has decreased, but is still cumbersome at 69 pages.<sup>5</sup> For credit unions, the median length is 31 pages. Although shorter, credit union disclosures often do not include information that would allow a customer to compare account fees, terms, and conditions.
- **Financial institutions do not provide accountholders with clear and comprehensive information about overdraft options and their costs.** For many bank and credit union accounts, consumers choose from three options for overdraft services: not opting in to such service, penalty plans, and transfer plans. Each option has significantly different features, and fees vary, but financial institutions are not required to provide complete information about what is available. As a result, consumers may not be aware of lower-cost options.
- **Certain overdraft fees have increased.** While bank overdraft penalty fees are unchanged from 2010, as reported in *Hidden Risks*, overdraft transfer and extended overdraft penalty fees have increased. A higher percentage of bank checking accounts now charge an extended overdraft penalty fee if an overdraft is not repaid in a timely manner. The median extended overdraft penalty fee has increased by 32 percent since 2010. The median overdraft penalty fee at the banks remains \$35; at the credit unions it is \$25.
- **All 12 banks either already reorder withdrawals from highest to lowest dollar amount or reserve the right to do so without notice to the customer, thus maximizing overdraft fees.** Seven of the 12 credit unions reserve the right to reorder a customer's transactions from high to low. Some do not disclose their posting order. Since there are no rules governing the order in which financial institutions process transactions, they can maximize the number of overdrafts by reordering deposits and withdrawals in such a way as to reduce the account balance as quickly as possible.

- All banks in Pew’s study restrict consumers’ options in the event of a dispute. Of the 237 distinct checking accounts offered by the 12 largest banks, 66 percent compel consumers to submit any disputes to mandatory binding arbitration, a system that requires customers to bring their claims to a private arbitrator instead of a judge or jury. The prevalence of bank accounts that hold customers liable for the financial institutions’ losses, costs, and expenses in the event of a dispute, regardless of the outcome, has increased since Pew’s first data collection.
- Require depository institutions to provide accountholders with clear, comprehensive terms and pricing information for all available overdraft options so that customers can make the best choice, including choosing not to opt in to any overdraft coverage.
- Require that overdraft penalty fees be reasonable and proportional to the financial institution’s costs in providing the overdraft loan or to the size of the overdraft itself.
- Require depository institutions to post deposits and withdrawals in a fully disclosed, objective, and neutral manner that does not maximize overdraft fees—for example, in chronological order.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires the CFPB to study mandatory arbitration in contracts for financial products and services, and, based on the findings, authorizes the CFPB to write new rules limiting these clauses.<sup>6</sup> The CFPB should conduct this study in a timely and efficient manner, as well as examine “loss, costs, and expenses” clauses in checking accounts.

Based on findings in this report and in *Hidden Risks*, Pew continues to recommend the following policy solutions to protect consumers, promote a competitive marketplace, and foster a level playing field among financial institutions. Pew urges that the following reforms be enacted, either by the Consumer Financial Protection Bureau (CFPB) through new regulations or by Congress through legislation that codifies these consumer protections:

- Require depository institutions to summarize information about checking account terms, conditions, and fees in a uniform, concise, and easy-to-read format that would be available both online and in financial institutions’ branches.

# Introduction

Checking accounts, used by 9 out of 10 adult Americans, play a vital role in household money management and thereby in the economy as a whole.<sup>7</sup> Yet despite their importance to an individual's financial health, checking accounts lack requirements to make disclosures consumer-friendly and to provide protections from hidden fees and deceptive practices.

The “banked” population (i.e., those with a checking or savings account) has the ability to save money securely and to build credit. Checking accounts provide households with the safety to make decisions about their money free from worries about theft or loss. Previous Pew research has shown that those who have a bank account withstand difficult economic times more easily than those without, and that those with a bank account tend to save more.<sup>8</sup>

In October 2010, Pew'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, as

detailed in our April 2011 report, *Hidden Risks*. This extensive research analyzed more than 250 distinct checking accounts offered by the main retail subsidiaries of the 10 largest bank holding companies in the United States, which held nearly 42 percent of all Federal Deposit Insurance Corporation (FDIC)-insured domestic deposits nationwide as of June 30, 2010.<sup>9</sup> Pew re-collected this data in October 2011, this time expanding the research to include the 12 largest retail banks and the 12 largest credit unions as determined by their domestic deposit volumes. This second round of research found 237 unique checking accounts at those banks, which collectively held more than 46 percent of domestic deposit volume at all FDIC-insured institutions as of June 30, 2011. The credit unions in the study, which collectively held nearly 15 percent of deposit volume at all National Credit Union Share Insurance Fund (NCUSIF)-insured institutions as of June 30, 2011, offered 37 distinct checking accounts.<sup>10</sup>

As of July 2011, a newly created regulatory agency, the Consumer Financial Protection Bureau (CFPB), obtained explicit authority over the products and services offered by

depository institutions and other financial services providers. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) created the CFPB and transferred 18 consumer protection statutes from existing bank regulators—including the Office of the Comptroller of the Currency, the Federal Reserve, and the FDIC—to the CFPB.<sup>11</sup> The bureau has consumer protection rule-writing authority over all of the financial institutions in this study.

This report, *Still Risky*, continues the work of *Hidden Risks* by tracking the practices and fees that impact Americans in the daily use of their checking accounts. Pew's research again focused on patterns that impose hidden, unnecessary, and potentially dangerous risks to consumers.

# I. Disclosure

## KEY FINDING

Financial institutions do not summarize important policies and fee information in a uniform, concise, and easy-to-understand format that allows customers to compare account terms and conditions.

Pew researchers examined bank and credit union disclosures for 274 checking accounts. These documents consisted of account agreements, addenda to account agreements, and fee schedules. For banks, the median length of the documentation was 69 pages, with a range of 21 to 153 pages. For credit unions, the median length of all disclosure documents was 31 pages, with a range of 9 to 53 pages. While a median of 69 pages is a decrease for banks from the median of 111 pages in last year's report, the difference may be an artifact of a change in methodology rather than a trend across the industry.<sup>12</sup>

Overall page length varied considerably among institutions due to differences in the organization, design, and layout of disclosure. For instance, some institutions used nonstandard page sizes for their printed materials, and others radically

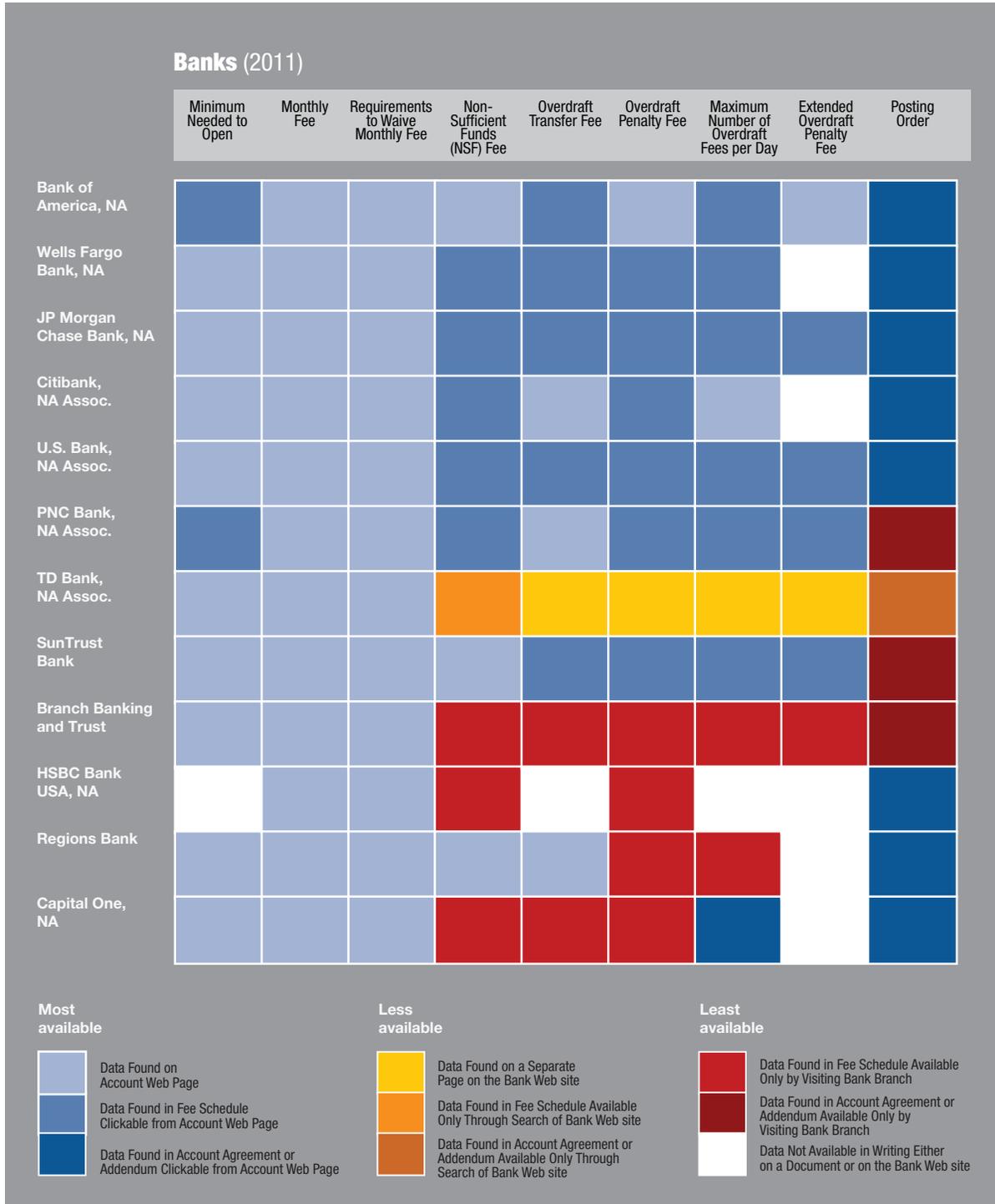
reduced the length of their documents by using six-point type. Other factors, such as legal jargon without clarification and convoluted sentence structure, may make disclosures impenetrable at any length.

Pew also evaluated the location of the disclosures for certain fees and rules—or if they were disclosed at all. In some cases, terms and conditions were accessible on the institution's checking home page or the Web pages of specific accounts, making them accessible to consumers. Information also could be accessed in fee schedules and account agreements available from the financial institutions' websites. However, in other instances, details were not disclosed in any of these online locations, requiring customers to visit bank branches in person or request disclosure documents by mail.

Table 1.1:

## Accessibility of Important Account Information - Banks

Where are the most important fees and policies commonly placed?

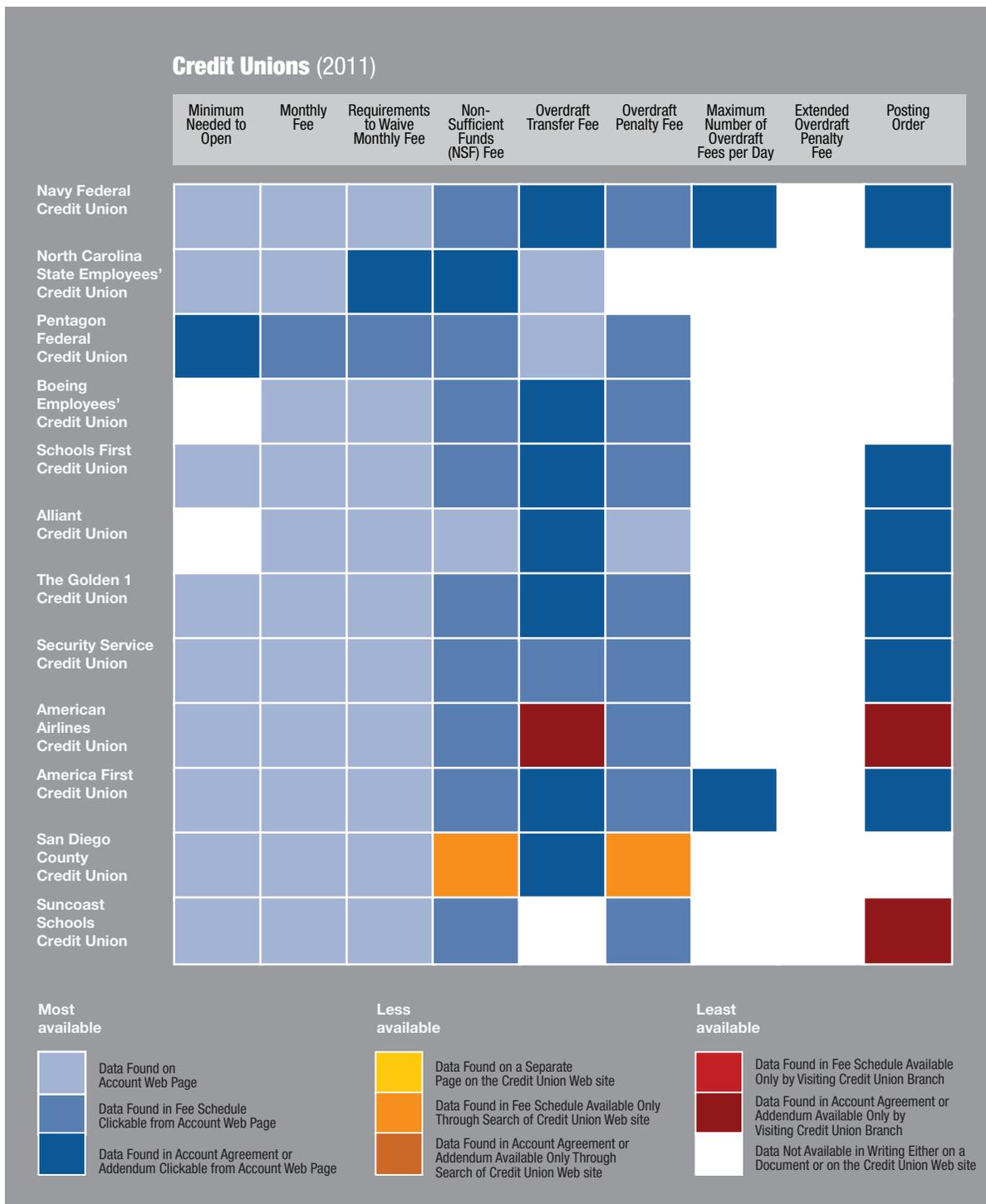


NOTE: The data here represent 237 checking accounts offered by the 12 largest American banks by domestic deposit volume as of June 30, 2011 (collectively holding 46 percent of domestic deposits at all FDIC-insured institutions) and 37 checking accounts offered by the 12 largest American credit unions by deposit volume as of June 30, 2011 (collectively holding 15 percent of deposits at all NCUSIF-insured institutions). Institutions are listed from top to bottom in order of deposit volume held. This table shows where each piece of important account information for consumers, as determined by Pew, was most accessibly located amongst the institutions' disclosure materials. See "III. Overdraft Fees," "IV. Processing of Deposits and Withdrawals," and "Appendix A" for an explanation of these fees and terms.

Table 1.2:

## Accessibility of Important Account Information - Credit Unions

Where are the most important fees and policies commonly placed?



## I. DISCLOSURE

Uniform disclosure of overdraft fees and terms would be especially helpful to consumers. At this point, however, banks do not even provide this information in a clear and concise manner. Four of the 12 banks did not disclose the size of overdraft penalty fees on their checking account home page or on the Web pages describing specific accounts, nor did they make available this information on any fee schedule linked from these Web sites.<sup>13</sup> Three banks in the study did not disclose online their fees for non-sufficient funds (NSF), and three banks omitted from their Web sites out-of-network automated teller machine (ATM) fees.

No credit union made reference to an extended overdraft penalty fee on its Web site or in any fee schedules or account agreements.<sup>14</sup> This disclosure likely is omitted because none of the credit unions charge an extended overdraft penalty fee, but it would be difficult for a customer to ascertain this without consulting an employee of the institution. Standardized disclosures would make it easier for a consumer to determine whether a fee is nonexistent or whether its existence has not been or is poorly disclosed.

Many institutions disclosed fees and rules related to monthly service charges. Every bank disclosed, on either its checking home page or the Web pages of individual checking accounts, both the monthly fee and the conditions under which it could

be waived. Eleven of the 12 credit unions disclosed monthly fees on their account Web pages, and 10 of the 12 featured the requirements to waive a monthly fee in that location as well. Nine of the 12 banks, and the same number of credit unions, disclosed on their account Web pages the minimum balance needed to open an account.

Even if a customer's bank or credit union has concise and well-organized disclosures, the consumer will find it extremely difficult to compare terms and fees across institutions because there is no industry-wide consensus on terminology. For example, what is referred to in this report as an "overdraft penalty fee" has eight different names among the 12 credit unions: "optional overdraft protection service transaction," "courtesy pay fee," "overdraft fee," "non-sufficient funds [NSF/OD] preauthorized withdrawal," "bounce protection," "overdrawn items," "courtesy clearing," and "paid NSF." The banks used five different names for an extended overdraft penalty fee: "extended overdrawn balance charge," "extended overdraft fee," "continuous overdraft charge," "sustained overdrafts," and "negative account balance fee."

Varying fee names and disclosure designs make it very difficult to compare options and can create substantial obstacles for consumers. For example, one credit union stated that an account had "no monthly

service fee,” but, in fact, had a “minimum balance fee” that was assessed monthly unless the customer’s balance was above a certain threshold. This fee appeared to be functionally identical to a monthly service fee, but the use of different terms has the potential to mislead customers.

Consumers also may be confused by the inclusion of fees or terms that apply exclusively to legacy accounts. As banks acquire other banks, account policies from the old bank are often “grandfathered in” for that bank’s accountholders. As a result, fees and terms may be added to fee schedules and account agreements that are not applicable to new accounts. Standard disclosures for each type of account offered could lessen this confusion.

These issues are exacerbated by the sheer number of different fees that a customer may encounter. While Pew identifies and discusses 12 fees that are common and central to checking accounts, the median number of additional service fees charged by banks was 26, and some accounts listed as many as 48. The median number of additional service fees charged by credit unions was 18, and some accounts listed up to 29 (see Appendix A).

### Analysis

#### **The Need for a Clear, Concise, and Uniform Disclosure Box**

Accessible, understandable, and transparent information is necessary for customers to make informed choices based on a product’s merits and fees when compared with its competition.

As part of *Hidden Risks*, Pew developed a model disclosure box for checking accounts based on input from focus groups held around the country (see Figure A). Participants found the information in the box to be very helpful and thought it could be used to comparison shop for a checking account. They also considered the disclosure box to be a useful tool to teach their children about the intricacies of bank accounts.<sup>15</sup>

Figure A:

## Pew's Model Disclosure Box for Checking Accounts

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-Bearing	yes/no		
	ATM Fees	\$	for using an ATM in your institution's ATM network	
		\$	for using an ATM outside of your institution's ATM network	
	Non-Sufficient Funds (NSF) Fee	\$	per declined transaction made against insufficient funds	
	Deposited Item Returned Fee	\$	for each item that you deposit that is rejected because the payor did not have enough money in their 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 Plan	Overdraft Transfer Fee	\$ per overdraft covered by a transfer from a linked savings account, line of credit, or credit card	
	Option C: Overdraft Penalty Plan	Overdraft Penalty Fee	\$	per overdraft covered by an advance from your financial institution
		Maximum Number of Overdraft Penalty Fees per Day		You will only be charged this number of overdraft penalty fees per day, even if we elect to cover additional overdrafts.
		Minimum Amount Required to Trigger an Overdraft Penalty Fee	\$	If you are overdrawn by this amount or less, you will not incur an overdraft penalty fee.
	Extended Overdraft Penalty Fee	\$	charged every X day the account is overdrawn, starting Y days after the account is first overdrawn	
Processing Policies	Posting Order <i>The order in which withdrawals and deposits are processed</i>		Summary of policy	
	Deposit Hold Policy <i>When funds deposited to your account are available</i>		<ul style="list-style-type: none"> <li>• Cash deposit with teller: X business day</li> <li>• Cash deposit at ATM: X business day</li> <li>• Check deposit with Teller: X business day</li> <li>• Check deposit at ATM: X business day</li> <li>• Direct deposit: X business day</li> <li>• Wire transfer: X business day</li> <li>• If something causes a longer hold on a deposit, the first \$200 of that deposit will be made available either the same business day or the next business day.</li> <li>• Funds from non-bank checks may take an extra business day to become available.</li> </ul> <p>A "business day" is a non-holiday weekday. The end of a "business day" varies by financial institution and by branch. At branches, business days end no earlier than Y p.m. and at ATMs business days end no earlier than Z p.m.</p>	
Dispute Resolution	Dispute Resolution Agreement		Summary of agreement	

Following the publication of the disclosure box, several financial institutions adopted it (for examples, see Appendix B). While each institution made modifications, all of these boxes do include relevant information for consumers, including all fees and important terms and conditions. However, because the boxes are not uniform, consumers are still faced with the difficult task of making “apples-to-oranges” comparisons across financial institutions and accounts.

The Truth in Savings Act (TISA), passed by Congress in 1991, requires that financial institutions provide disclosures to consumers about the key fees, terms, and conditions of their checking accounts.<sup>16</sup> However, it does not mandate that these disclosures be concise or organized in a consumer-friendly way. Authority under TISA has now been transferred to the CFPB, which allows the bureau to require that financial institutions provide clear and concise disclosures in a uniform format.

### **‘Smart Disclosure’ Is Not Enough**

The Obama administration also has taken interest in disclosures. The Office of Management and Budget released a memorandum to executive agencies on “Smart Disclosure” in September 2011 that refers to them as:

...the timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions. Smart disclosure will typically take the form of providing individual consumers of goods and services with direct access to relevant information and data sets. Such information might involve, for example, the range of costs associated with various products and services, including costs that might not otherwise be transparent. In some cases, agencies or third-party intermediaries may also create tools that use these data sets to provide services that support consumer decision-making.<sup>17</sup>

While it is useful to have checking account information available in a machine readable format that allows a third party to provide comparison data to consumers, this does not replace the need for a simple, concise disclosure box. Machine readable information will potentially not provide assistance to those without Internet access or savvy. In addition, since the ultimate cost of a checking account is often determined by the terms and conditions of that account’s deposit agreement, a machine readable list of bank fees will not necessarily provide the full range of

information needed by consumers when choosing an account. Practices such as transaction reordering, for example, would be important to include in smart disclosure, but it is not clear that this could be adequately accounted for in a machine readable format, given the difficulty of reflecting the impact of terms and conditions in fee comparisons.

## II. Overdraft Options

### KEY FINDING:

Financial institutions do not provide accountholders with clear and comprehensive information about overdraft options and their costs.

Pew tracked two main types of overdraft plans, labeled here as “overdraft penalty plans” and “overdraft transfer plans.” Overdraft penalty plans are defined as a service in which short-term advances are made for a fee by the financial institution to cover an overdrawn checking account.

An overdraft transfer plan involves an automatic transfer from another account or product (i.e., a savings account, credit card, or overdraft line of credit) to pay for any overdrafts. Customers must apply for overdraft transfer plans and affirmatively enroll in an overdraft penalty plan that covers ATM and point-of-sale debit card transactions. However, financial institutions are allowed to automatically enroll accountholders in overdraft penalty plans for other types of transactions, such as checks and Automated Clearinghouse (ACH) payments.<sup>18</sup>

### Overdraft Penalty Plans

In 2011, as in 2010, every bank in Pew’s study had an overdraft penalty plan available for at least some types of transactions and at least some of their accounts. This also was true for 10 of the 12 credit unions reviewed in 2011.

In these overdraft penalty plans, the financial institution allows a customer to spend more money than is available in his or her checking account, paying for the items drawn against insufficient funds. For each such transaction that pushes the checking account into the negative, the bank charges a fee. The fee and the amount covered are usually paid by pulling funds out of the customer’s next deposit. At many of the banks studied in 2010 and 2011, if the account remains overdrawn for more than a median of seven days, an extended overdraft penalty fee is added.

## II. OVERDRAFT OPTIONS

Financial institutions can automatically enroll their accountholders in overdraft penalty plans for check, ACH, and other transactions. However, since August 2010 the Electronic Fund Transfer Act (EFTA) regulations (Regulation E) have required banks and credit unions to obtain affirmative consent before extending an overdraft penalty plan to cover nonrecurring debit card and ATM transactions.<sup>19</sup> The default option (i.e., what will happen if the consumer takes no action) is that the accountholder will not be enrolled in any overdraft plan for point-of-sale (POS) debit and ATM transactions, leading to declined transactions without fees.

### Overdraft Transfer Plans

In 2011, all 12 banks disclosed the availability of an overdraft transfer plan for at least some of their accounts, and 11 of the 12 credit unions disclosed the same. In 2010, all 10 banks made reference to an available overdraft transfer plan, although not all explained the terms.<sup>20</sup>

This option involves the automatic transfer of funds from another account to cover an overdraft and the associated transfer fee. The transfer comes from a linked account such as a savings account, credit card, or line of credit. Financial institutions cannot automatically enroll their customers in overdraft transfer plans; instead, accountholders must affirmatively apply for this option. Overdraft transfer plans may cover all types of transactions that can cause a checking account to be overdrawn, including checks, ACH, point-of-sale debit, and ATM transactions.

### Current Disclosure Requirements

To facilitate compliance with Regulation E, the Federal Reserve published a model opt-in form for point-of-sale debit and ATM overdraft penalty plans (see Figure B).<sup>21</sup> The Federal Reserve has made this form a regulatory “safe harbor,” meaning that any financial institution that uses it or a close variation is automatically in compliance with Regulation E. This creates a strong incentive for banks and credit unions to provide this document to their customers.

Figure B:

## Federal Reserve Overdraft Opt-In Model Form A-9

### What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. 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, ask us about these plans.

This notice explains our standard overdraft practices.

➤ **What are the standard overdraft practices that come with my account?**

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

➤ **What fees will I be charged if [Institution Name] pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

➤ **What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

-----  
 I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date:

## II. OVERDRAFT OPTIONS

The model form does provide some useful information, such as the overdraft penalty and extended overdraft penalty fee amounts, but it leaves out several important items that could influence a customer's decision in choosing an overdraft plan. In addition, some of the language used in the form does not necessarily clarify the available options.

Details about how an overdraft penalty plan works and the cost of the accompanying fee are included in the model. However, specific information is not provided about any overdraft transfer plans that the bank or credit union might also offer. The form includes only two sentences stating that such plans are available and that a bank staff person can provide more information if asked. Since overdraft transfer fees are frequently much lower than overdraft penalty fees (see Section III: Overdraft Fees), the lack of disclosure regarding the comparative cost of the fees might lead customers to select a more expensive overdraft plan than they would have if all the details and options were presented.

By using potentially confusing names for overdraft transfer and penalty plans, the Federal Reserve model continues the practice of non-uniformity. For instance, overdraft transfer plans are labeled “overdraft protection plans,” often used by institutions as the name for their overdraft *penalty* plans. Meanwhile, penalty plans are called “standard overdraft” practices, which may suggest to accountholders that this is the default option or the choice designed for most customers. Such a misunderstanding obscures the actual default option (i.e., what will happen if the customer takes no action): no enrollment in any overdraft plan for point-of-sale debit and ATM transactions, leading to declined transactions without fees.

Additionally, the structure of the form is misleading because it gives the impression that customers need to take some action in order to not opt in, by encouraging them to fill out, tear off, and return the bottom of the form to the bank. These instructions obscure the true default option: customers do not need to take any action.

## Analysis

### Disclosures Should Clearly Lay Out All Overdraft Options

Survey research by the Center for Responsible Lending shows that many consumers believe that by opting in to an overdraft penalty plan they will avoid incurring high overdraft penalty fees, when in fact the opposite is the case.<sup>22</sup> The Federal Reserve’s model form does not help consumers by clarifying which options are available.

The model disclosure box developed by Pew includes and describes the three options that most financial institutions offer their customers for overdrafts (see Figure C). It identifies the default option for consumers: for no cost, transactions drawn against insufficient funds will be denied. The box also provides information about both overdraft penalty and transfer plans and their respective costs. A revised model opt-in form could make use of a similar design.

Figure C:

### Overdraft Options Excerpt from Pew’s Model Disclosure Box for Checking Accounts

<b>Overdraft Options for Consumers with Debit Cards</b>	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 Plan	Overdraft Transfer Fee	\$	per overdraft covered by a transfer from a linked savings account, line of credit, or credit card	
		Overdraft Penalty Fee	\$	per overdraft covered by an advance from your financial institution	
	Option C: Overdraft Penalty Plan	Maximum Number of Overdraft Penalty Fees per Day			You will only be charged this number of overdraft penalty fees per day, even if we elect to cover additional overdrafts.
		Minimum Amount Required to Trigger an Overdraft Penalty Fee		\$	If you are overdrawn by this amount or less, you will not incur an overdraft penalty fee.
		Extended Overdraft Penalty Fee		\$	charged every X day the account is overdrawn, starting Y days after the account is first overdrawn

## III. Overdraft Fees

### KEY FINDING:

Certain overdraft fees have increased.

#### Overdraft Penalty Fee

A bank or credit union charges an overdraft penalty fee when it advances funds to cover a transaction that would otherwise overdraw a customer's checking account. Pew found the median overdraft penalty fee for banks in 2011 was \$35, with a range from \$10 to \$36, unchanged from 2010. The median overdraft penalty fee for credit unions was \$25, with a range from \$0.01 to \$29. Every bank in the study and 99 percent of the bank accounts disclosed an overdraft penalty fee, as did 10 of the 12 credit unions and 84 percent of the credit union accounts.

#### Maximum Number of Overdraft Penalty Fees per Day

Almost all banks limit the number of overdraft penalty fees that can be incurred per day.<sup>23</sup> For both types of financial institutions, the median cap in 2011 was four overdraft penalty fees per day, which, for banks, is unchanged from 2010.

The median maximum amount of overdraft fees that a customer could be charged per day is \$140 for banks, which is unchanged from 2010, and \$100 for credit unions.<sup>24</sup>

#### **Minimum Negative Balance to Trigger Overdraft Penalty Fee**

Some accounts charge an overdraft penalty fee only if an individual's negative balance drops below a certain threshold. This ensures that, for example, a customer will not incur a \$35 fee for purchasing a \$4 cup of coffee. A minimum balance trigger was disclosed by 9 of the 12 banks (66 percent of accounts) and by 2 of the 10 credit unions (29 percent of accounts) that offered an overdraft penalty plan.<sup>25</sup> Among bank accounts, the median minimum amount a customer would have to be in the red to incur an overdraft penalty fee was \$5; the median minimum trigger at credit unions was \$10. This is unchanged for banks since 2010, but the percentage disclosing a minimum amount to trigger an overdraft penalty fee has more than doubled from the 26 percent recorded in 2010. Two banks in the 2010 study (Wells Fargo and U.S. Bank) added a minimum balance trigger for overdrafts in the past year, and the two banks added to the 2011 study (BB&T and Regions) disclosed such triggers as well.

#### **Extended Overdraft Penalty Fee**

Banks may levy an extended overdraft penalty fee if an accountholder overdrafts and does not deposit enough money to cover both the overdraft and the penalty fee within a set time period. No credit union disclosed an extended overdraft penalty fee.

The median extended overdraft penalty fee among bank accounts was \$33, a 32 percent increase over 2010's \$25. Among the bank accounts that charge an extended overdraft penalty fee, the median number of days between the first overdraft and the extended overdraft penalty being levied was seven, unchanged from 2010.

Seven of the 12 banks that charged an overdraft penalty fee also disclosed an extended overdraft penalty fee. Sixty-four percent of bank accounts that offered an overdraft penalty plan also could incur extended overdraft penalty fees, which represents an increase from 45 percent in 2010.

#### **Overdraft Transfer Fee**

Banks and credit unions may offer an overdraft transfer plan in addition to, or instead of, an overdraft penalty plan. All 12 of the banks in this study offered an overdraft transfer plan. Seventy-seven percent of all bank accounts disclosed an overdraft transfer fee associated with such a plan, a decrease from 89 percent in 2010. The median bank overdraft transfer fee increased from \$10 in 2010 to \$12 in 2011, a 20 percent increase. Although 11 of the 12 credit unions offered an overdraft transfer plan, only 5 (43 percent of all credit union accounts) disclosed the fee for overdraft transfers. In those cases, the median charge per transfer was \$5.

Overdraft transfers cannot incur extended overdraft penalty fees since customer funds in a different account cover the negative balance immediately. However, customers may be limited in the number of times they can use the service per month since Federal Reserve regulations prohibit more than six automatic transfers from a savings account per statement cycle.<sup>26</sup>

#### **Non-Sufficient Funds Fee**

Every bank and credit union charged non-sufficient funds (NSF) fees—incurred if a customer attempts to make a check payment that would overdraw the account and the bank chooses not to cover the attempted transaction. The median NSF fee for bank accounts was \$35, unchanged from our data in 2010. The median for credit union accounts was \$26.

## **Analysis**

### **Overdraft Fees Are Excessive and Need to Be Limited**

Overdraft fees and practices continue to cost consumers billions of dollars every year although, according to Moebs Services, bank overdraft fee revenue has declined from a high of \$37.1 billion in 2009 to \$29.5 billion in 2011.<sup>27</sup>

This decrease has been attributed to a number of regulatory changes, including the need for consumers to opt in to overdraft penalty services, as required by the Federal Reserve's amendment to Regulation E.<sup>28</sup> There is wide variation in the reporting of the number of consumers who chose to do so.<sup>29</sup>

In addition, in November 2010 the FDIC issued a nonbinding guidance on overdraft fees to the banks it directly regulates, which tend to be small community banks. The guidance notes: "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."<sup>30</sup> It further advises member banks to contact customers who overdraw their accounts six times in a 12-month period in order to discuss alternate options to overdraft penalty plans, such as overdraft transfers, small-dollar loans, or opting out of overdraft penalty plans.<sup>31</sup> Only 1 of the 12 banks in this study, BB&T, is regulated primarily by the FDIC.

Pew's most recent research shows that more banks are charging an extended overdraft penalty fee than did in 2010, and the median amount of this fee has increased by 32 percent. While fewer consumers are enrolled in overdraft penalty services given the regulatory changes, those who have opted in are paying more through increased charges for extended overdraft penalty fees.

No federal bank regulator limits either the number or size of overdraft fees. The median size of the transaction that pushes a customer into overdraft is \$36, according to the FDIC.<sup>32</sup> If the median bank overdraft penalty fee of \$35 is applied to an overdraft of this size, with a repayment period of seven days, the annual percentage rate (APR) would exceed 5,000 percent—a costly way to address credit needs.<sup>33</sup>

#### **Overdraft Fees Push Consumers Out of the Banking System**

One study of overdraft opt-in rates determined that many customers who chose the service did so without fully understanding their options.<sup>34</sup> Such confusion is problematic in part because unexpected and unexplained fees such as overdraft charges push consumers out of the banking system. *Slipping Behind: Low-Income Los Angeles Households Drift Further from the Financial Mainstream*, a Pew longitudinal study of 2,000 low-income households, half of whom were

banked and half unbanked, showed the detrimental effects of these and other hidden fees. The study, conducted during the economic downturn of 2009-2010, showed that more people (32 percent) left the banking system because of unexpected or unexplained fees than left because of job loss or lack of funds (27 percent).<sup>35</sup> FDIC research on those who have closed their accounts has elicited similar results.<sup>36</sup>

#### **Checking Account Holders Support Regulation of Overdraft Fees**

Public support for reining in fees is strong. In a survey of checking account holders commissioned by Pew in July 2011, 69 percent of all respondents said it would be a positive change if overdraft penalty fees were limited by how much it costs a bank to provide the coverage. Seventy percent of those who have overdraft service and 68 percent of those without it said this would be a positive change.<sup>37</sup>

#### **Overdraft Service Is a Minimal Credit Risk**

An assessment of the structure of overdraft penalty plans also suggests that these fees are excessive. Since overdrafts and penalty fees are paid back to the financial institution with the consumer's next deposit, this service poses minimal credit risk to the bank. Banks maintain that high overdraft penalty fees are justified because they are penalties meant to deter customers from overdrawing their accounts.<sup>38</sup> However, if the point is to

discourage accountholders from exceeding their balance, the most direct way to communicate this is to deny the overdraft itself.

Indeed, two banks in Pew's study (HSBC and Bank of America) explicitly state in their disclosure documents that they decline debit overdrafts at the point of sale, and HSBC also states that it does not allow overdrafts at ATMs. Among credit unions, Alliant explicitly states that it does not allow overdrafts at ATMs. For several of the credit unions, the details of their overdraft penalty plans were too poorly disclosed to be able to determine exactly the types of transactions allowed to overdraw an account.

#### **The Credit CARD Act Provides a Model for Regulating Overdraft Fees**

The Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act) demonstrates that there is precedent for regulating these types of fees. The act requires that credit card penalty fees be “reasonable and proportional” to a cardholder's action or omission, and it prohibits multiple fees for the same transaction.<sup>39</sup> Pursuant to that mandate, the Federal Reserve issued rules restricting credit card penalty fees, with some exceptions, and provided a “safe harbor” fee rate (a charge limited to \$25 or

the amount of the violation, whichever is lower, for the first transgression).<sup>40</sup> While not mandatory, the Credit CARD Act's 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.

Currently, overdraft fees vary greatly based on the type of plan. Overdraft transfer plans tend to have lower fees than overdraft penalty plans and cut off the potential for a cycle of debt. But banks' overdraft transfer fees increased, from a median of \$10 in 2010 to \$12 in 2011. Rising overdraft transfer fees could disincentivize savings and push customers into overdraft penalty plans. If overdraft penalty fees are regulated and overdraft transfer fees are not, these trends could be worsened. Overdraft transfer fees can be considered an excessive charge for a consumer to access his or her own money, and it is hard to justify this as the incremental cost to the bank.

#### **The CFPB Should Use Its UDAAP Authority to Regulate Overdraft Fees**

The CFPB has rulemaking authority to regulate unfair, deceptive, or abusive acts or practices (UDAAP) in consumer financial products and services for all financial institutions.

### III. OVERDRAFT FEES

To declare an act or practice unfair, the CFPB must find that it meets three criteria. First, there must be a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers. Second, the injury must not be reasonably avoidable by consumers. Third, the injury cannot be outweighed by countervailing benefits to consumers or competition.<sup>41</sup>

A deceptive act or practice requires a representation or omission of material information that is likely to mislead consumers into acting unreasonably under the circumstances.<sup>42</sup>

While the abusive prong of UDAAP is new and untested in courts, the language of the law provides two ways to show that there has been a violation. An abusive act or practice must either (1) materially interfere with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) take 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 his or her interests in selecting or using a financial product or service; or (c) the reasonable reliance by the consumer on a financial institution to act in the interests of the consumer.<sup>43</sup>

This statutory language and the past interpretations by the Federal Reserve indicate that the CFPB could possibly use its UDAAP power to implement regulations limiting overdraft fees.

Financial institutions may lose significant revenue should they be required to charge overdraft penalty fees that are reasonable and proportional to their costs. However, given the hidden nature of these fees (charged after the fact and without warning), a transparent monthly fee of which consumers are well aware seems like a fairer way for banks to cover their costs and for accountholders to know what they are required to pay.

## IV. Processing of Deposits and Withdrawals

### KEY FINDING:

All 12 banks either already reorder withdrawals from highest to lowest dollar amount or reserve the right to do so without notice to the customer, thus maximizing overdraft fees.

Financial institutions are not required to process transactions chronologically or to add any deposits to an account holder's balance before subtracting withdrawals. Both the reordering of withdrawals from highest to lowest dollar amount and the posting of withdrawals before deposits deplete an account balance more quickly, increasing the likelihood of the account becoming overdrawn and incurring multiple overdraft fees. In addition, the nonchronological posting of debits makes it impossible for a customer to know exactly how much money he or she has in the bank at a given moment—also escalating the possibility of inadvertently incurring an overdraft.

Five of the 12 banks—Wells Fargo, Chase, SunTrust, TD Bank, and BB&T—representing 56 percent of accounts, fully informed account holders of the order in which all debits and credits are posted. This is an improvement from Pew's 2010 study, in which just 1 bank out of 10—Chase, representing less than 5 percent of accounts, provided such disclosure. None of the 12 credit unions disclosed both the order in which they processed debits and credits and the order in which they posted withdrawals.

### Deposit-Withdrawal Posting Order

Four of the 12 banks—Wells Fargo, Chase, TD Bank, and BB&T (51 percent of accounts)—informed customers that each day all deposits would be posted before withdrawals. Only one bank (5 percent of accounts) stated that it would

do the reverse, subtracting all withdrawals from the account balance before adding deposits. Another bank (19 percent of accounts) indicated that it reserved the right to order deposits and withdrawals at its discretion. The remaining six banks (25 percent of accounts) did not disclose their deposit-withdrawal posting order.

This is an improvement since 2010, when only 2 of the 10 banks studied—Chase and Wells Fargo (48 percent of accounts)—disclosed that, on a daily basis, all deposits would be processed prior to withdrawals. At the time, no banks said that they would process withdrawals before deposits, but two (20 percent of accounts) did explicitly reserve the right to process them in any order they chose. The six remaining banks (32 percent of accounts) did not disclose any information on this subject.

None of the credit unions in our October 2011 study disclosed the posting order of deposits and withdrawals.

### **Debit Posting Order**

All 10 banks in Pew's previous study reserved the right to reorder a customer's withdrawals from highest to lowest dollar amount, thereby more quickly depleting the account balance and increasing the number of overdraft fees. Six of the 10 banks (32 percent of accounts) stated that they would process all or some debits from

high to low, while the other 4 banks (68 percent of accounts) simply reserved the right to process a customer's withdrawals in any order that they chose—citing high to low as an option.

As of October 2011, all 12 banks either reordered withdrawals from highest to lowest dollar amount or reserved the right to do so. However, only eight banks (43 percent of accounts) stated that their default policy was to process all debits from high to low. Two banks—Citibank and BB&T (34 percent of accounts)—disclosed that their default policy was not to reorder a customer's debits in a way that maximized fees, preferring a chronological or lowest to highest dollar amount posting order instead. Another two banks—Wells Fargo and Chase (23 percent of accounts)—disclosed a hybrid policy in which, depending on the type of transaction or the situation, debits could be posted from highest to lowest, chronologically, or from lowest to highest.

Of the credit unions, 7 of the 12 (59 percent of accounts) reserved the right to reorder withdrawals from highest to lowest dollar amount. One credit union—Navy Federal (14 percent of accounts)—disclosed that it would post debits from lowest to highest dollar amount. Four credit unions (27 percent of accounts) did not disclose a debit posting order.

## Analysis

### Transaction Reordering Leads to Greater Overdraft Charges

Posting order policies by the largest U.S. banks changed between Pew's first and second data collections. More banks in 2011 disclosed that they post deposits before withdrawals. Additionally, four banks—BB&T, Chase, Citibank, and Wells Fargo—specifically disclosed that they post either chronologically or in low-to-high order for at least some types of debits so as to not maximize overdraft fees. However, the fact remains that all four of these banks reserved the right to change their posting order at their discretion.

There are no federal regulations that govern the procedures used to process transactions. Banks are not required to post deposits before withdrawals, nor are they required to post debits in any particular order. The FDIC has issued a guidance instructing its supervised banks not to reorder transactions to maximize fees, but since it is not a formal regulation, it is non-binding.<sup>44</sup>

Posting orders that maximize overdraft fees, especially those that post withdrawals from largest to smallest (see Figure D), continue to be the subject of numerous court challenges under state laws as unfair and deceptive practices. In *Gutierrez v. Wells Fargo*, the United States District Court for the Northern District of California, in finding for the plaintiffs, stated, "...the essence of this case is that Wells Fargo has devised a bookkeeping device to turn what would ordinarily be *one* overdraft into as many as *ten* overdrafts, thereby dramatically multiplying the number of fees the bank can extract from a single mistake. The draconian impact of this bookkeeping device has then been exacerbated through closely allied practices specifically 'engineered'—as the bank put it—to multiply the adverse impact of this bookkeeping device. These neat tricks generated colossal sums per year in additional overdraft fees just as the internal bank memos had predicted."<sup>45</sup>



In addition to *Gutierrez*, numerous lawsuits were filed in 2009 alleging that federally chartered banks intentionally reordered the posting of transactions from highest to lowest dollar amount to maximize overdraft fees. These cases were later consolidated into a single class action, *In re Checking Account Overdraft Litigation*, with claims brought against several banks, including Bank of America, Citibank, Wells Fargo, Chase, and Wachovia.<sup>47</sup> While some of the named banks chose to settle out of court, others went forward with the litigation.<sup>48</sup>

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. For instance, as part of its disclosure box, Chase succinctly laid out its posting order policies so that consumers can better understand the impact of transaction ordering on their account balance (see Figure E, “Chase Checking Disclosure Box”).

### **The CFPB Has the Authority to Ban Transaction Reordering that Maximizes Overdraft Fees**

The Dodd-Frank Act provides the CFPB with the authority to prohibit practices that maximize overdraft fees. EFTA gave the Federal Reserve, and now the CFPB, authority to regulate all aspects of electronic fund transfers.<sup>49</sup> In enacting this law, Congress accounted for the always-changing technological environment and provided broad regulatory authority to the federal agency enforcing EFTA.<sup>50</sup> Accordingly, the CFPB has the authority to ban financial institutions from reordering debit transactions from high to low in order to maximize fee revenue. Likewise, the CFPB, pursuant to its UDAP authority, may rein in the practice of reordering withdrawals and posting them from highest to lowest dollar amount by finding that such practice is either unfair, deceptive, or abusive. This power extends to both electronic transactions and paper checks.

# V. Dispute Resolution

## KEY FINDING:

All banks in Pew’s study restrict consumers’ options in the event of a dispute.

As with the banks in Pew’s 2010 study, all 12 banks studied in 2011 placed some restriction on an account holder’s ability to access civil courts in the event of a legal dispute. These restrictions include waiving

the right to trial by jury, waiving the right to join a class-action lawsuit, entering binding mandatory arbitration, and shifting fees onto consumers.

Table 2:

## Dispute Resolution Provisions

How do financial institutions restrict customers’ access to courts in the case of dispute?

Checking Account Dispute Resolution Terms	Percentage of 2010 Bank Accounts	Percentage of 2011 Bank Accounts	Percentage of 2011 Credit Union Accounts
Customer waives right to jury trial	96%	98%	11%
Customer waives right to class action	94%	93%	11%
Customer required to enter binding mandatory arbitration	71%	66%	11%
Customer must pay the bank’s “loss, costs, and expenses”	12%	32%	5%

NOTE: The 2011 data represent 237 checking accounts offered by the 12 largest American banks by domestic deposit volume as of June 30, 2011 (collectively holding 46 percent of domestic deposits at all FDIC-insured institutions) and 37 checking accounts offered by the 12 largest American credit unions by deposit volume as of June 30, 2011 (collectively holding 15 percent of deposits at all NCUSIF-insured institutions). The 2010 data represent 265 checking accounts offered by the 10 largest American retail banks by their bank holding companies’ deposits as of October 2010 (those 10 retail institutions collectively holding 42 percent of domestic deposits at all FDIC-insured institutions). Most accounts disclose more than one dispute resolution restriction.

### **Jury and Class-Action Waivers**

In both the 2010 and 2011 iterations of Pew's study, the vast majority of the banks' account agreements prohibited customers from taking a legal dispute with their bank before a jury. In 2010, 8 of the 10 banks studied (96 percent of accounts) disclosed a jury trial waiver. In 2011, 11 of the 12 banks (98 percent of accounts) and one of the 12 credit unions (11 percent of accounts) did so.

During both years of Pew's studies, most account agreements banned customers from joining a class-action lawsuit against the bank. In 2010, 7 out of 10 banks (94 percent of accounts) disclosed a class-action waiver; in 2011, 9 out of 12 banks (93 percent of accounts) and 1 credit union of 12 (11 percent of accounts) did so.

### **Mandatory Arbitration**

Six of the 12 banks (66 percent of accounts) made customers forfeit their right to take a legal dispute with their bank to a court and before a judge and jury.<sup>51</sup> Instead, these six banks require customers to submit any dispute to mandatory binding arbitration, a process that differs from litigation in that the arbitrator is often chosen by the industry, there is no requirement that the rule of law be applied, and there is little opportunity for appeal. The 2011 data represent a

change from our October 2010 study, in which only 4 out of 10 banks (71 percent of accounts) had a similar arbitration requirement. For the credit unions, 1 of 12 (11 percent of accounts) bound its customers into mandatory arbitration agreements.

### **Loss, Costs, and Expenses**

Banks are increasingly turning to fee-shifting provisions to push the cost of a legal dispute onto the consumer. Four of the 12 banks (32 percent of accounts) in October 2011 included clauses in their account agreements that require the customer to reimburse the bank for any loss, costs, or expenses, including attorneys' fees, incurred as a result of a legal dispute involving the customer's account, regardless of who wins the suit. Four of the 10 banks in Pew's October 2010 study included such clauses in their account agreements, but those were not all the same banks as in the 2011 survey and they represented only 12 percent of all accounts. One credit union (5 percent of accounts), included a loss, costs, and expenses clause in its account agreement in 2011.

## Analysis

### **Bank Checking Account Dispute Resolution Restrictions Are Ubiquitous**

Just as was found in 2010, provisions restricting customers' access to legal remedies continue to be pervasive. The Federal Arbitration Act states that arbitration agreements are generally allowed in contracts.<sup>52</sup> In addition, recent Supreme Court decisions have made it easier for banks to insulate themselves under mandatory binding arbitration provisions.<sup>53</sup>

Some agreements have retained the language requiring that the consumer pay the financial institutions' "loss, costs, and expenses" regardless of who wins the dispute in court. While these provisions may not be enforceable, they could have a chilling effect on the ability of consumers to enforce their account agreements.

As part of the Dodd-Frank Act, the CFPB is required to study arbitration clauses attached to the agreements for financial products.<sup>54</sup> The bureau should include an assessment of fee-shifting provisions—including loss, costs, and expenses clauses—to determine their prevalence and whether such provisions prevent consumers from obtaining relief.

# Conclusion

Since the publication of *Hidden Risks*, a number of financial institutions have taken the lead in providing their potential and current customers with a concise document summarizing the fees, terms, and conditions of the checking accounts offered. Pew commends these institutions and encourages others to do the same. However, it would be beneficial to consumers for all institutions to have a uniform box, similar to a nutrition label, that allows easy comparison of account offerings. The CFPB has the authority to ensure that this type of uniform and consistent information is available to all Americans, no matter what financial institution they choose.

In addition, consumers should be able to make an informed decision about whether they want overdraft service and, if so, what plan best meets their needs after all options are disclosed. Accountholders should not be subjected to unrestrained overdraft charges or to hidden practices that maximize these fees. Overdraft fees should be proportional either to the bank's costs or to the size of the overdraft itself. Posting order should be objective, neutral,

and clearly disclosed, and should not be used to maximize charges. Finally, the CFPB should fulfill its mandate to conduct a study on mandatory binding arbitration in a timely and thorough manner.

An efficient market requires informed consumers who can make choices based on the product that best meets their needs. This is particularly important for an item as fundamental and significant as a checking account. Having such an account allows consumers to move into the financial mainstream and provides the opportunity to build credit. Yet unexpected and hidden fees push consumers out of this important marketplace.

The implementation of Pew's policy recommendations would allow consumers to make educated choices while minimizing the risk of unexpected and unexplained fees, with the hope of expanding the reach of checking accounts. These changes will support consumers, financial institutions, and the marketplace as a whole.

# Policy Recommendations

Just as in *Hidden Risks*, Pew continues to recommend the following policy solutions to address the findings of our checking account studies. While industry can make these changes voluntarily, policy makers should create a level playing field for all market participants by implementing these proposals via regulation or legislation.

## Disclosure

The CFPB or Congress should require depository institutions to provide information about checking account terms, conditions, and fees in a uniform, concise, and easy-to-read format (see Figure A) that would be available online and in financial institutions' branches. Pew commends those financial institutions that have adopted a disclosure box and supports the provision of machine-readable information. However, to ensure that all consumers have access to this information, the CFPB should require all financial institutions to provide information in a uniform disclosure box. The bureau could provide the platform for small financial institutions with limited resources so that they may easily adopt the box.

## Overdraft Options

The CFPB or Congress should require depository institutions to provide accountholders with clear, comprehensive terms and pricing information for all available overdraft options when a customer is considering **opting in to a plan**. Accordingly, the customer can make the best choice among overdraft options, including choosing not to opt in for any coverage.

## Overdraft Fees

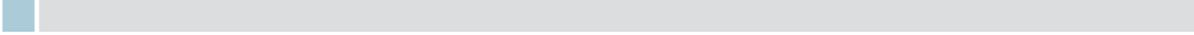
The CFPB or Congress should require overdraft penalty fees be reasonable and proportional to the institution's costs in providing the overdraft loan or to the size of the violation. Furthermore, Pew suggests that regulators monitor overdraft transfer fees and impose similar restrictions if it appears that these are becoming so disproportionate as to suggest that they have become penalty fees as well.

### **Processing of Deposits and Withdrawals**

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

### **Dispute Resolution**

The CFPB should conduct its mandated study of arbitration agreements in a timely and thorough fashion. In the study, the bureau should examine the prevalence of binding arbitration clauses; fee-shifting provisions; and loss, costs, and expenses clauses in checking accounts, and assess whether such provisions prevent consumers from obtaining relief.



# Appendix A: Explication of Median Fees

Table 3 summarizes Pew's findings from both *Hidden Risks* (2010 bank data) and this report (2011 bank and credit union data). The chart tracks banks' and credit unions' most important policies and fees, which correspond to the fees and the terms included in Pew's model disclosure box (Figure A). All numbers are medians, and all text represents the most common versions of important account provisions. Unless addressed earlier in this report, a full definition of each of the listed fees, terms, and policies and a further discussion of these findings are located later in this appendix.

Table 3

## The Cost of a Checking Account: Median Fees and Most Common Policies

What does the median checking account look like?

Fee/Policy Name	2010 Banks	2011 Banks	2011 Credit Unions	Fee/Policy Description
<b>Account Disclosures</b>				
Median Length of Disclosures	111	69	31	pages
<b>Account Opening &amp; Usage</b>				
Minimum Deposit Needed to Open Account	\$100.00	\$100.00	\$25.00	
Monthly Fee	\$10.00 <sup>55</sup>	\$12.00	\$6.00	
Minimum Combined Account Balance to Avoid Monthly Fee	86%	88%	82%	of accounts with a monthly fee waived that fee by maintaining a minimum balance
	\$2,500.00	\$2,000.00	\$625.00	median minimum combined account balance to waive monthly fee
Direct Deposit to Avoid Monthly Fee	43%	44%	47%	of checking accounts with a monthly fee waived that fee if the customer had a recurring direct deposit
Interest/Dividend Bearing	41%	34%	57%	of accounts bear interest or dividends
Out-of-Network ATM Fee	\$2.00	\$2.50	\$1.50	for using an ATM outside an institution's ATM network
Non-Sufficient Funds (NSF) Fee	\$35.00	\$35.00	\$26.00	per declined transaction made against insufficient funds
Deposited Item Returned Fee	\$12.00	\$12.00	\$10.00	for each item that a customer deposits that is rejected because the payor did not have enough money in his or her account
Stop Payment Fee	\$30.00 <sup>56</sup>	\$34.00	\$22.00	per item to stop payment for up to six months
Account Closing Fee	38%	56%	27%	of accounts have an account closing fee
Other Service Fees	40 <sup>57</sup>	26	18	median number of additional service fees
	\$1.50 - \$175.00	\$0.10 - \$125.00	\$0.10 - \$100.00	range of the cost of additional service fees

Table 3 (continued)

## The Cost of a Checking Account: Median Fees and Most Common Policies

What does the median checking account look like?

Fee/Policy Name		2010 Banks	2011 Banks	2011 Credit Unions	Fee/Policy Description
<b>Overdraft Options for Consumer with Debit Cards</b>					
Option A: (Default)	No Overdraft Service	If a customer chooses not to opt in to any kind of overdraft service for ATM and POS debit transactions, such a transaction that would cause an overdraft will be declined at no cost to the customer.			
Option B: Overdraft Transfer Plan	Overdraft Transfer Fee	\$10.00	\$12.00	\$5.00	per overdraft covered by a transfer from a linked savings account, line of credit, or credit card
Option C: Overdraft Penalty Plan	Overdraft Penalty Fee	\$35.00	\$35.00	\$25.00	per overdraft covered by an advance from the financial institution
	Maximum Number of Overdraft Penalty Fees per Day	4	4	4	Customers will not be charged more than this number of overdraft penalty fees per day, even if their financial institution elects to cover additional overdrafts.
	Minimum Amount Required to Trigger an Overdraft Penalty Fee	\$5.00	\$5.00	\$10.00	If customers are overdrawn by this amount or less, they will not incur an overdraft penalty fee.
	Extended Overdraft Penalty Fee	\$25.00	\$33.00	None disclosed	charged on the 7th day the account remains overdrawn

Table 3 (continued)

## The Cost of a Checking Account: Median Fees and Most Common Policies

What does the median checking account look like?

Fee/Policy Name		2010 Banks	2011 Banks	2011 Credit Unions	Fee/Policy Description
<b>Processing Policies</b>					
Posting Order (the order in which deposits and withdrawals are processed)		100%	100%	59%	of accounts reorder withdrawals from highest to lowest dollar amount or reserve the right to do so
		48%	51%	Not disclosed	of accounts will post deposits before withdrawals
Deposit Hold Policy (when funds deposited to an account become available)	Check Deposit with Teller:	Same business day	Same business day	Next business day	
	Cash Deposit with ATM:	Same business day	Next business day	Second business day	
	Check Deposit with Teller:	Next business day	Next business day	Next business day	
	Check Deposit with ATM:	Next business day	Next business day	Next business day	
	Direct Deposit:	Same business day	Same business day	Same business day	
	Wire Transfer:	Same business day	Same business day	Next business day	
Business Day:		A "business day" is a non-holiday weekday. The end of a "business day" varies by financial institution and by branch. At branches, business days end no earlier than 2:00 p.m., and at ATMs business days end no earlier than 12:00 p.m.			
<b>Dispute Resolution</b>					
Dispute Resolution Restrictions		100%	100%	16%	of accounts disclose restrictions to customers' rights to settle legal disputes
		71%	66%	11%	of accounts have mandatory arbitration agreements
		12%	32%	5%	of accounts require customers to pay any "loss, costs, and expenses" the institution incurs in a dispute, regardless of outcome

NOTE: The 2011 data represent 237 checking accounts offered by the 12 largest American banks by domestic deposit volume as of June 30, 2011 (collectively holding 46 percent of domestic deposits at all FDIC-insured institutions), and 37 checking accounts offered by the 12 largest American credit unions by deposit volume as of June 30, 2011 (collectively holding 15 percent of deposits at all NCUSIF-insured institutions). The 2010 data represent 265 checking accounts offered by the 10 largest American retail banks by their bank holding companies' deposits as of October 2010 (those 10 retail institutions collectively holding 42 percent of domestic deposits at all FDIC-insured institutions).

## Account Opening and Usage

As with any other consumer product or service, there are costs to the customer for opening and maintaining a checking account. The fees and policies assessed in this section are ones that a customer is likely to deal with on a day-to-day basis, not including those pertaining to overdrafts, posting order, or dispute resolution policies.

### Minimum Deposit Needed to Open Account

Ten of the 12 banks and 7 of the 12 credit unions studied required a minimum deposit to open an account. Eighty-seven percent of individual bank accounts required a minimum opening balance, down from 91 percent in the 2010 sample. The median minimum opening balance for bank accounts was \$100, unchanged from the 2010 median.

Among credit union accounts, 46 percent disclosed a minimum opening balance. The median minimum requirement was \$25. To open an account at a credit union, customers are frequently required to purchase a share in the institution (also referred to as a membership fee). The median price of a share was \$5 and ranged from \$1 to \$50. A share price was disclosed by 10 of the 12 credit unions, and, among individual credit union accounts, 92 percent disclosed the cost of this fee.

## Monthly Fee

All 12 banks and 8 of the 12 credit unions charged a monthly fee for some of their accounts. The share of bank accounts charging a monthly fee (89 percent) was similar to the 87 percent of bank accounts that did the same in Pew's 2011 report. Monthly fees were charged for 46 percent of credit union accounts.

The median monthly fee for bank accounts has risen from \$10 in 2010 to \$12 in 2011, which represents a 20 percent increase.<sup>58</sup> For credit union accounts in 2011, the median monthly fee was \$6.

### Disclosed Requirements to Waive Monthly Fee

Ninety-four percent of both bank and credit union accounts with a monthly fee offered some method for waiving that fee. Because every institution offered a variety of options to do so across different accounts, Pew omitted the tallies of institutions disclosing each waiver. In the following discussion of monthly fee waivers, all references to percentages of accounts refer to those that charge a monthly fee.

### Minimum Combined Account Balance

Eighty-eight percent of bank accounts and 82 percent of credit union accounts allowed customers to waive a monthly fee by maintaining a minimum balance. Depending on the institution and the particular checking account, this balance

can include the funds in a customer's checking account, savings account, mortgage, credit cards, lines of credit, money market account, certificates of deposit, or other accounts. Some bank and credit union accounts offer different tiers of minimums and combined account balances to qualify, depending on how many accounts the customer has linked. In these cases, the lowest combined account balance required was tracked for this report.

Among bank accounts with this waiver, the median balance needed so as not to be charged a monthly fee was \$2,000. Among credit union accounts, it was \$625. The median balance required to waive a monthly fee in our 2010 study of banks was \$2,500.

### 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. Close to half (44 percent) of bank accounts allowed customers to waive monthly fees by maintaining a recurring direct deposit. Of these bank accounts, 90 percent disclosed a minimum size of the direct deposit to qualify for the waiver. The median for this was \$100.

Forty-seven percent of credit union accounts allowed customers to waive monthly fees using a recurring direct deposit. Of these credit union accounts,

50 percent disclosed a minimum size of direct deposit to qualify for the waiver, the median of which was \$250.

### Other Ways to Avoid Monthly Fees

Approximately 41 percent of bank accounts and 24 percent of credit union accounts offered some alternate method for waiving the monthly fee. Only six percent of bank accounts and credit union accounts had no way to do so. These alternate waivers were diverse. Some accounts allowed for it if a certain number of debit card transactions were made per month. For other accounts, the fee could be waived in any month that the customer incurred service charges that exceeded the size of the monthly fee. Some student accounts did not incur charges as long as the student was enrolled in good academic standing and/or maintained a minimum grade point average.

### Interest

Thirty-four percent of bank accounts were interest-bearing accounts, a decline from 41 percent in the 2010 study. The share of credit union accounts that offered interest or dividends was 57 percent.

### Fees at In-Network and Out-of-Network ATMs

No banks and one credit union (5 percent of accounts) charged a fee for withdrawals at in-network ATMs. The fee at this institution was \$1.50 per transaction.

Every bank and 9 out of 12 credit unions disclosed a fee for making withdrawals at out-of-network ATMs. The proportion of bank accounts that can incur these charges—87 percent—is comparable to the 89 percent found in 2010. The size of the median out-of-network ATM fee at banks has increased 25 percent, from \$2 in 2010 to \$2.50 in the most recent data. Eighty-one percent of credit union accounts disclosed a fee for withdrawals at out-of-network ATMs. The median ATM fee charged by credit unions at out-of-network ATMs was \$1.50.

### **Debit Card and Check Transaction Fees**

#### **Debit Card Usage Fee**

Monthly debit card usage fees are charged in any month a debit card is used to make a purchase. At the time of data collection in October 2011, 6 of the 12 banks (10 percent of accounts) charged this fee. The median monthly usage charge for bank accounts was \$3. No credit unions charged a fee for using a debit card. Since October 2011, all of these bank accounts have changed their terms and no longer charge this fee. Some of these accounts have refunded all fees of this type that had been incurred by consumers.<sup>59</sup>

#### **Debit Card Transaction Fee**

Banks and credit unions may also charge a per-transaction fee every time a customer makes a point-of-sale debit card transaction. Two banks (2 percent of accounts) and one credit union (11 percent of accounts) disclosed this fee. For both types of institutions, the median fee charged was \$0.25.

#### **Check Transaction Fee**

Customers also may be charged for every check they write. Four banks (6 percent of accounts) and two credit unions (8 percent of accounts) disclosed a per-check transaction fee. For both types of institutions, the median fee charged was \$0.25.

#### **Deposited Item Returned Fee**

In 2011, all 12 banks (92 percent of accounts) and 10 of 12 credit unions (84 percent of accounts) disclosed a deposited item returned fee, which is charged if a customer attempts to deposit an item into his or her checking account that later does not clear because the payor has insufficient funds.<sup>60</sup> All 12 banks in 2010 (100 percent of accounts) levied this fee as well. The median fee charged by banks in 2011 was \$12, unchanged from 2010. Credit union accounts charged a median deposited item returned fee of \$10.

### 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 such fee for bank accounts was \$34, which represents a 13 percent increase over the 2010 median fee of \$30. The credit union accounts charged a median stop payment fee of \$22. For both bank and credit union accounts, the median length of a stop payment order was six months. In 2011, all 12 banks (84 percent of accounts) and all 12 credit unions (100 percent of accounts) charged a stop payment fee. In 2010, all 10 banks (92 percent of accounts) levied this fee.

### Account Closing Fee

All banks that disclosed an account closing fee specified that it would be charged only during a specific period after the customer opened the account. Although this could limit a customer's ability to move funds, if the fee is in effect only for a short time after opening an account, it protects the bank or credit union from customers who would take advantage of opening bonuses and then quickly close their accounts.

The median period during which banks charge this fee was 90 days from account opening, and the longest span was 180 days. Eight of 12 banks (56 percent of accounts) disclosed an account closing fee, an increase from 6 of 10 banks (38 percent of accounts) in 2010. The median account closing fee disclosed was \$25.

Three credit unions (27 percent of accounts) disclosed an account closing fee, and, in every case, this fee was charged only in the first 90 days after an account was opened. The median size of the account closing fee at credit unions was \$5.

### Other Service Fees

In addition to the 12 different fees this report considers in depth, there are frequently many other fees associated with checking accounts. The fees charged, their cost, and their numbers vary from institution to institution and from account to account.

Among the banks studied in 2011, the median account had 26 service fees beyond those discussed in this report, with some accounts having as few as 4, and some having as many as 48. Fees ranged from \$0.10 to \$125. These figures are somewhat lower than those for the banks studied in 2010, from which the median account had 40 other service fees. In addition, the range of fees per account was 7 to 54, while the cost of those fees ranged from \$1.50 to \$175.

The credit unions had fewer miscellaneous fees, with the median account containing 18 additional service fees. These accounts had a range of 6 to 29 fees, and their cost ranged from \$0.10 to \$100.

While some of these additional service fees might sound familiar to customers, the possible charges included such diverse fees as those for “empty envelope,” “bad address,” “online images and photocopy requests: self-service through online banking,” “domestic wire transfer email notification,” “coins deposited (large amount),” “rejected offline ATM transactions,” and “customer service representative assisted transfer.”

# Appendix B: Financial Institution Disclosure Box Examples

Figure E:

## Chase Checking Disclosure Box


CHASE TOTAL CHECKING™

**A GUIDE TO YOUR ACCOUNT†**

**It's important that you understand exactly how your Chase Total Checking account works.**  
We've created this Guide to explain the fees and some key terms of your personal account.

<b>MONTHLY SERVICE FEE</b>	Monthly Service Fee	<b>\$12</b> (\$10 in California, Oregon, Washington)
	How to avoid the Monthly Service Fee	<b>\$0 Monthly Service Fee when you have ONE of the following (during each monthly statement period):</b> <ul style="list-style-type: none"> <li>• Direct deposits totaling \$500 or more made to this account monthly</li> <li>• <b>OR</b>, a \$1,500 minimum daily balance in this account</li> <li>• <b>OR</b>, an average daily balance of \$5,000 or more in a combination of qualifying linked deposits<sup>1</sup>/investments<sup>2</sup></li> <li>• <b>OR</b>, pay \$25 or more in qualifying checking-related services or fees<sup>3</sup></li> </ul>

<b>ATM FEES</b>	Chase ATM	<b>\$0</b> for using a Chase ATM to complete any transaction.
	Non-Chase ATM	<b>\$2</b> for using a non-Chase ATM in the U.S. plus any fees the ATM owner charges.

**Fees for using your account when you don't have enough money in it or it's already overdrawn**

<b>OVERDRAFT FEES</b>	Insufficient Funds Fee	<b>\$34</b> for each item we pay (maximum 3 Insufficient Funds and Returned Item fees per day). Example: You write someone a check and we pay it even though you didn't have enough money in your account. However, if your account balance at the end of the business day is overdrawn by \$5 or less, there is no fee.
	Returned Item Fee	<b>\$34</b> for each item we do not pay (maximum 3 Insufficient Funds and Returned Item fees per day). Example: You write someone a check and we return it to them unpaid because you didn't have enough money in your account.
	Extended Overdraft Fee	<b>\$15</b> is charged once after your account is overdrawn for 5 consecutive business days. You will be charged this fee even if your account is overdrawn by \$5 or less.
	Overdraft Protection Transfer Fee (If you are enrolled)	<b>\$10</b> for each day when we transfer available funds through Overdraft Protection. However, if your ending account balance is overdrawn by \$5 or less before the transfer happens, there is no fee.

† This Guide is part of your Deposit Account Agreement and contains additional information about the fees and features of your account. For the terms governing your account, please consult the [Deposit Account Agreement](#). The terms of the account, including any fees or features, may change. This account requires a \$25 minimum deposit to open.

1 Qualifying personal deposit accounts include the following: this checking account, personal savings accounts, CDs, and certain Chase Retirement CDs and certain Chase Retirement Money Market Accounts (balances in Chase Money Purchase Pension and Profit Sharing Plans do not qualify).

2 Qualifying personal investment accounts include the following: Prior end-of-month balances for Chase Investment Services Corp. (CISC) investment accounts, certain retirement plan investment balances (investment balances in Chase Money Purchase and Profit Sharing Plans do not qualify), JPMorgan Funds accounts, annuity products (annuities made available through Chase Insurance Agency, Inc. (CIA) and Chase Insurance Agency Services, Inc.) and personal trust accounts. Securities (including mutual funds and variable annuities) and investment advisory services are offered through CISC or affiliated broker/dealers. Annuities and insurance products are provided by various insurance companies and offered through CIA, a licensed insurance agency, doing business as Chase Insurance Agency Services, Inc. in Florida. CISC, a member of FINRA/SIPC, and CIA are affiliates of JPMorgan Chase Bank, N.A. Products not available in all states.

INVESTMENT AND INSURANCE PRODUCTS ARE:				
NOT A DEPOSIT	NOT FDIC INSURED	NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY	NOT GUARANTEED BY THE BANK	MAY LOSE VALUE

3 Qualifying fees are listed on pages 1-3, excluding the Monthly Service Fee, Non-ATM Cash fee and Exchange Rate Adjustment.

HAVE QUESTIONS? DAY OR NIGHT, JUST CALL US AT 1-800-935-9935 ■ WANT MORE INFO? SEE THE [DEPOSIT ACCOUNT AGREEMENT](#)

Figure E: (continued)

# Chase Checking Disclosure Box


CHASE TOTAL CHECKING<sup>SM</sup>

<b>CHASE DEBIT CARD COVERAGE AND FEES<sup>4</sup></b> <small>(Please visit <a href="http://www.chase.com/Coverage">www.chase.com/Coverage</a> for additional details.)</small>	<b>Chase Debit Card Coverage:</b> You can choose how we treat your everyday debit card transactions when you don't have enough money available. <i>Please note: Regardless of which option you choose for Chase Debit Card Coverage, you may also want to sign up for Overdraft Protection if you are eligible.</i> Please visit <a href="http://www.chase.com/OverdraftProtection">www.chase.com/OverdraftProtection</a> for more details, including terms and conditions.	
	<b>OPTION #1 (YES): You ask us to add Chase Debit Card Coverage.</b>	
	This means you want Chase to approve and pay your everyday debit card transactions, at our discretion, when you don't have enough money available. Fees may apply.	
	<b>Insufficient Funds Fee</b>	<b>\$34</b> for each debit card purchase that overdraws your account. If your account balance at the end of the business day is overdrawn by \$5 or less, there is no fee.
	<b>Maximum Number of Insufficient Funds Fees Per Day</b>	<b>3</b> per day.
<b>OPTION #2 (NO): No Chase Debit Card Coverage (If you don't choose an option when you open your account, Option #2 (No) is automatically selected for you.)</b>		
This means you do not want Chase to approve and pay your everyday debit card transactions when you don't have enough money available. Since everyday debit card transactions will be declined when there is not enough money available, you won't be charged an Insufficient Funds Fee for everyday debit card transactions.		

<b>HOW DEPOSITS AND WITHDRAWAL WORK</b>	<b>The Order in Which Withdrawals and Deposits Are Processed</b>	Generally, for each business day we will: <ul style="list-style-type: none"> <li>• <b>FIRST</b>, add deposits to your account</li> <li>• <b>SECOND</b>, subtract items for which we receive time and date information in the order in which they were authorized, withdrawn or deposited (such as non-repeating everyday debit card transactions, ATM withdrawals, cashed checks and online transactions).<sup>5</sup></li> <li>• <b>THIRD</b>, subtract all other items in highest to lowest dollar amount. We may use a different order in certain states.</li> </ul>
	<b>When Your Deposits Are Available<sup>6</sup> (Deposit Hold Policy)</b>	<ul style="list-style-type: none"> <li>• Cash deposit with teller or at ATM — Same business day</li> <li>• Direct Deposit/wire transfer — Same business day</li> <li>• Check deposit with teller or at ATM — Usually the next business day, but sometimes longer                             <ul style="list-style-type: none"> <li>- If we place a longer hold on a non-Chase check, the first \$200 will be available by the next business day</li> <li>- The date your deposit is expected to be available will be displayed on your receipt</li> <li>- In some situations, we may notify you after your deposit is made that your funds will not be available for up to 7 business days</li> </ul> </li> </ul> <p>A "business day" is a non-holiday weekday generally ending at 5 p.m. or later local time.</p>

<b>SOME OTHER FEES</b>	<b>Stop Payment Fee</b>	<b>\$30</b> per item to stop payment OR <b>\$25</b> per item if requested on chase.com or by using the automated phone system, 1-800-935-9935.
	<b>Deposited Item Returned Fee</b>	<b>\$12</b> for each item you deposit or cash that is returned unpaid. Example: You deposit a check from someone who didn't have enough money in their account. The amount of the deposit will be subtracted from your balance and you will be charged the Deposited Item Returned Fee.
<b>See the next page for other fees that may apply.</b>		

4 **Important Details about your Chase Debit Card Coverage:** Everyday debit card transactions include PIN point of sale transactions made with your ATM card. We will charge an Insufficient Funds Fee of \$34 each time we pay an overdraft created by check, ACH, in-person withdrawal, debit card transaction or other electronic means. We will charge a Returned Item Fee of \$34 for any check or ACH transaction that we return unpaid because your account had insufficient funds. The most you would pay is three of these fees per day for insufficient funds or returned items, no matter the number of transactions. Also, each time your account is overdrawn for 5 consecutive business days, we will charge you an additional \$15 (Extended Overdraft Fee). Once an overdraft has occurred, you are obligated to bring your account to a positive balance promptly. Whether your overdraft will be paid is at Chase's discretion, and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have had excessive overdrafts. Whether or not you choose to have your everyday debit card transactions covered, the way we treat your recurring debit card transactions (such as a gym membership) when you don't have enough money in your account, will not be affected. We may, at our discretion, authorize and pay a recurring debit card transaction that causes an overdraft and charge an Insufficient Funds Fee.

5 Chase receives time and date information for everyday debit card transactions, ATM withdrawals, online banking transactions, teller cash withdrawals, cashed checks and deposited checks drawn on us when presented in the branch, and wire transfers.

6 For complete details, please consult the [Deposit Account Agreement](#) which includes the Funds Availability Policy.

HAVE QUESTIONS? DAY OR NIGHT, JUST CALL US AT 1-800-935-9935
■ WANT MORE INFO? SEE THE [DEPOSIT ACCOUNT AGREEMENT](#)
2

Figure E: (continued)

## Chase Checking Disclosure Box

CHASE 		CHASE TOTAL CHECKING <sup>SM</sup>
<b>OTHER ATM AND DEBIT CARD FEES</b>	<b>Withdrawal from an ATM outside the U.S., Puerto Rico and the U.S. Virgin Islands.</b>	\$5.00 per withdrawal
	<b>Card Replacement (Rush Request):</b> Express shipping of a replacement debit card.	\$5.00 per card OR \$0 per card if not a rush request
	<b>Non-ATM Cash fee:</b> You use your Chase Debit Card to withdraw cash from a teller at a bank that is not Chase.	3% of the dollar amount of the transaction OR \$5.00, whichever is greater
	<b>Exchange Rate Adjustment:</b> You make card purchases, non-ATM cash transactions or ATM withdrawals in a currency other than U.S. dollars.	3% of withdrawal amount after conversion to U.S. dollars
<b>STATEMENT SERVICES</b>	<b>Snapshot Statement (without checks):</b> Printing a statement of your account transactions from the last statement date through the mid statement date you provide.	\$6.00 per statement
	<b>Statement Copy:</b> Providing additional copies of your statement that you pick up at a branch or ask us to fax or mail.	\$6.00 per statement OR \$0 on chase.com
<b>WIRE TRANSFERS</b>	<b>Domestic and Foreign Incoming:</b> A wire transfer that is deposited into your account from another bank account. There is NO FEE if the domestic wire transfer was sent from another Chase account.	\$15.00 per item
	<b>Domestic Outgoing:</b> A wire transfer that you send from your account to another U.S. bank account.	\$30.00 per item if made via a branch or telephone banking OR \$25.00 per item if made through chase.com
	<b>Foreign Outgoing or Remittance fee:</b> A wire transfer that you send from your account to a bank account outside of the U.S.	\$45.00 per item <sup>7</sup> if made via a branch or telephone banking OR \$40.00 per item if made through chase.com
<b>MISCELLANEOUS</b>	<b>Collections, Bond Coupons:</b> Chase facilitates payment for a bond issued by a private corporation or a federal, state, or local government agency.	\$5.00 per envelope
	<b>Collections Domestic:</b> Chase facilitates payment for a non check item drawn on a U.S. bank such as a draft.	\$25.00 per item
	<b>Collections Foreign:</b> Chase facilitates payment for an item that is drawn on a non U.S. bank.	\$45.00 per item
	<b>Order for Checks or Supplies:</b> An order of personal checks, deposit slips or other banking supplies.	varies (based on items ordered)
	<b>Counter Check:</b> An emergency check when you don't have any checks left in your checkbook.	\$2.00 per check
	<b>Money Order:</b> Can be used as an alternative to a personal check. You can purchase money orders up to \$1,000.	\$5.00 per item
	<b>Cashiers Check:</b> A check guaranteed by the bank.	\$8.00 per check
	<b>Travelers Check:</b> A preprinted, fixed-amount check that allows the person signing to make an unconditional payment to someone.	2% of value
	<b>Gift Cards:</b> Available in any amount from \$25-\$500. Accepted anywhere Visa <sup>®</sup> debit cards are accepted. (Not available in CT or NJ).	\$3.50 per card OR \$4.95 per card if ordered on chase.com
<b>Legal Process:</b> Processing of any garnishment, tax levy, or other court administrative order against an account, whether or not the funds are actually paid.	up to \$125 per order	
<b>ONLINE BANKING SERVICES</b>	<b>Online Overnight Check<sup>SM</sup> Service Fee:</b> See chase.com for details.	\$14.99

<sup>7</sup> No Remittance Fee for three Rapid Cash<sup>®</sup> transfers of \$1,500 or less per month.

© 2012 JPMorgan Chase Bank, N.A. Member FDIC  
Effective as of 3/19/12

Figure F:

# North Carolina State Employees' Credit Union Checking Disclosure Box

### SECU Checking Account Fees and Terms

As of 11-02-2011

	<b>\$ 0.00</b>	
Minimum Deposit to Open Account		
Monthly Fee	<b>\$ 1.00</b>	Members may choose between donation to SECU Foundation or monthly maintenance fee. 0.25% APY. Fees and other conditions may reduce earnings on an account.
Interest Rate	<b>0.25%</b>	
Maximum Number of Checks per Statement to Avoid Service Charge	<b>50</b>	
Service Charge per Check in Excess of 50 per Statement Period	<b>\$ 0.20</b>	
BillPay Service Fee	<b>\$ 0.00</b>	first 50 items per calendar month
Service Charge per BillPay Item in Excess of 50 per Calendar Month	<b>\$ 0.20</b>	
ATM Fees	<b>\$ 0.00</b>	for using SECU's Cash Points ATM
ATM Fees	<b>\$ 0.75</b>	for using Visa/PLUS ATM (completed transactions or inquiries)
ATM Fees	<b>\$ 0.35</b>	for using Visa/PLUS ATM (incomplete transactions or inquiries)
Non-Sufficient Funds (NSF) Fee	<b>\$ 0.00</b>	for "NSF Fee Free" days*
Non-Sufficient Funds (NSF) Fee	<b>\$12.00</b>	after 1 <sup>st</sup> two "NSF Fee Free" days
Returned Check Fee	<b>\$ 5.00</b>	per check returned from a deposit
Stop Payment Fee	<b>\$ 8.00</b>	per item to stop payment for up to 12 months

\*NSF Fee Free Days are the first two days of a calendar year in which NSF fees are incurred

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Account Opening and Usage

SECU offers the transfer of available funds from existing deposit or line of credit accounts in order to prevent the checking account from becoming overdrawn.

	<b>\$ 0.00</b>	for 1 <sup>st</sup> two days with Overdraft Transfers per year
Overdraft Transfer Fee		
Overdraft Transfer Fee	<b>\$ 0.50</b>	for Overdraft Transfers after 1 <sup>st</sup> two free days
Excessive Overdraft Transfer Fee	<b>\$12.00</b>	per transfer from share or money market share accounts exceeding six in a calendar month**

\*\*Repeated excessive transfers may result in loss of overdraft privileges

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Overdraft Options

SECU makes every effort to post items presented on your account in the following order:

1. All Credits
2. Preauthorized Debits\*\*\* (in smallest to largest order)
3. ACH Debits (in smallest to largest order)
4. Checks (in smallest to largest order)

\*\*\*Preauthorized debits are items that SECU is obligated to pay because the debits were previously authorized based on your account balance at the time you performed the transaction. Preauthorized debits include debit card transactions, ATM withdrawals, account withdrawals performed in a branch, and automatic funds transfers.

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Processing Policies

Funds Availability Policy

SECU's policy is to make funds from your deposits available on the same business day a deposit is received.

Funds deposited to your account are generally available for immediate withdrawal:

Cash Deposit with Teller	same business day
Cash Deposit with ATM	next business day
Check Deposit with Teller	same business day
Check Deposit with ATM	next business day
Direct Deposit	same business day
Wire Transfer Deposit	same business day

If SECU notifies you at the time of your deposit that SECU is delaying funds availability on a portion of the deposit, the first \$200 of that deposit will be made available the same business day. A "business day" is a non-holiday weekday. The end of a business day is no earlier than 5:30pm, except for ATM deposits.

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Dispute Resolution

If you have a dispute regarding your account or the service you have received, you should notify your local branch. You may request escalation of your issue within the Credit Union. We will do our best to resolve the issue directly with you.

If we are unable to resolve the dispute to your satisfaction, you may contact the Credit Union Division of the State of North Carolina. State Employees' Credit Union is incorporated under the laws of the State of North Carolina and is subject to regulatory oversight by the Credit Union Division.

NC Credit Union Division  
 205 W Millbrook Road, Suite 105  
 Raleigh, NC 27609  
 (919) 571-4888

Figure G:

## Pentagon Federal Credit Union Checking Disclosure Box

<b>PenFed Complete Access Checking Overview</b>		
<b>ACCOUNT OPENING AND USAGE</b>		
<b>Minimum Deposit Needed to Open Account</b>	<b>\$25</b>	
<b>Monthly Fee</b>	<b>\$10</b>	
	<b>Note:</b> Monthly fee is waived if you have Direct Deposit of your net pay, retirement pay, or other such recurring deposit, or maintain a daily balance of at least \$500.	
<b>Interest Rate</b>	None	
<b>ATM Card or Check (Debit) Card Service Fee</b>	None	
<b>ATM Fees</b>		
Member using a PenFed or non-PenFed ATM	None. The owner of a non-PenFed ATM may charge a fee.	
Non-member using PenFed ATM on military installations	None	
<b>International Transaction Fee</b>	Up to <b>2%</b> of the transaction amount	
<b>Non-Sufficient Funds (NSF) Fee</b>	<b>\$30</b> per item	
<b>Uncollected Funds (UCF) Fee</b>	<b>\$10</b> per item returned due to deposit on hold	
<b>Returned Deposited Check Fee</b>	<b>\$5</b> per item	
<b>Stop Payment Fee</b>	<b>\$15</b> for one check; <b>\$25</b> for two or more simultaneous stop payments	
<b>Account Closure Fee</b>	None	
<b>OVERDRAFT OPTIONS FOR CHECKING ACCOUNTS</b>		
<b>Overdraft Penalty or Transfer Fee</b>	None	
	<b>Note:</b> If a member declines overdraft service, transactions that will cause an overdraft will be returned unpaid and the account will be charged a non-sufficient funds (NSF) or uncollected funds (UCF) fee. Overdraft service is not available for point of sale debit and ATM transactions; those transactions will be declined.	
<b>PROCESSING POLICIES</b>		
<b>Posting Order</b> The order in which withdrawals and deposits are processed.	ATM and Point-of-Sale transactions are posted immediately. Deposits post first, then checks in the order of smallest amount to largest.	
<b>Deposit Hold Policy</b>		
Immediate Availability	Preauthorized credits (Direct Deposits), U.S. Treasury checks payable to you, state and local government checks payable to you, cash and Personal checks: Any amount up to <b>\$200</b> ; Non-personal check: Any amount up to <b>\$500</b> .	
Two Business Day Hold	Personal check: Any amount over <b>\$200</b> ; Non-personal check: Any amount over <b>\$500</b> .	
	<b>Note:</b> Deposit Hold Policy and funds availability is subject to Regulation CC, Expedited Funds Availability Act. Additional restrictions or delays may apply. Please reference the PenFed Membership Disclosure for full details regarding funds availability. A "business day" is a non-holiday weekday. The end of a business day varies by U.S. branch, but it is no earlier than 3:00 PM.	
<b>DISPUTE RESOLUTION</b>		
PenFed does not require mandatory arbitration.		
<b>ADDITIONAL CHECKING ACCOUNT SERVICE FEES</b>		
<b>Bill Pay Basic Fee</b> Pay more than 4,000 major billers.	None	
<b>Bill Pay Premium Fee</b> Pay any U.S. biller, including local merchants.	<b>\$5</b> per month (additional 50c for excess of 15 transactions per cycle)	
<b>First Check Order Fee</b>	None	
<b>Standard Checks Shipping and Handling</b>	<b>\$5</b> after first order	
<b>Deposit Anywhere Home Deposit Service Fee</b> Get immediate credit for checks deposited using your home computer.	None (for qualified members)	
Questions? Call us at 800-247-5626 or visit us online at PenFed.org. This credit union is federally insured by the National Credit Union Administration.		
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Form 1015 Checking Terms and Conditions 11/11		

# Appendix C: Methodology

Table 4:

## List of Financial Institutions Reviewed by Pew

Bank	Percentage of Total Domestic Deposits in FDIC-Insured Institutions Held by Bank	Value of Domestic Deposits in Bank
Bank of America, NA	11.53%	\$948,680,150,000.00
Wells Fargo Bank, NA	9.25%	\$761,154,000,000.00
JPMorgan Chase Bank, NA	9.04%	\$743,268,000,000.00
Citibank, NA	3.82%	\$314,469,000,000.00
U.S. Bank, NA	2.41%	\$198,407,561,000.00
PNC Bank, NA	2.20%	\$180,771,942,000.00
TD Bank, NA	1.73%	\$142,448,746,000.00
SunTrust Bank	1.54%	\$126,776,134,000.00
Branch Banking and Trust Company (BB&T)	1.34%	\$110,323,589,000.00
HSBC Bank USA, NA	1.20%	\$98,701,717,000.00
Regions Bank	1.20%	\$98,397,236,000.00
Capital One, NA	1.12%	\$92,259,313,000.00
<b>Total Domestic Deposits at 12 Studied Institutions</b>	<b>46.39%</b>	<b>\$3,815,657,388,000.00</b>
<b>Total Domestic Deposits at All FDIC-Insured Institutions</b>	<b>100.00%</b>	<b>\$8,225,629,742,000.00</b>

Table 4: (continued)

## List of Financial Institutions Reviewed by Pew

Credit Union	Percentage of Total Shares and Deposits in NCUSIF-Insured Institutions Held by Credit Union	Value of Shares and Deposits in Credit Union
Navy Federal Credit Union	4.04%	\$32,784,562,195.00
North Carolina State Employees' Credit Union	2.60%	\$21,130,129,593.00
Pentagon Federal Credit Union	1.48%	\$12,024,153,921.00
Boeing Employees' Credit Union	1.06%	\$8,646,979,343.00
Schools First Federal Credit Union	0.94%	\$7,626,200,340.00
Alliant Credit Union	0.80%	\$6,520,820,549.00
The Golden 1 Credit Union	0.80%	\$6,502,401,605.00
Security Service Federal Credit Union	0.69%	\$5,576,387,903.00
American Airlines Credit Union	0.60%	\$4,847,754,212.00
America First Credit Union	0.56%	\$4,562,732,232.00
San Diego County Credit Union	0.55%	\$4,453,430,112.00
Suncoast Schools Federal Credit Union	0.54%	\$4,415,382,691.00
<b>Total Value of Shares and Deposits at 12 Studied Institutions</b>	<b>14.66%</b>	<b>\$119,090,934,696.00</b>
<b>Total Value of Shares and Deposits at All NCUSIF-Insured Institutions</b>	<b>100.00%</b>	<b>\$812,202,527,871.00</b>

NOTE: Data on bank deposits are from the FDIC and are current as of June 30, 2011. Data on credit union deposits are from the National Credit Union Administration (NCUA) and are current as of June 30, 2011. This table shows the percentage of all domestic deposits at FDIC-insured institutions and the percentage of all shares and deposits at NCUSIF-insured institutions that are held by the 12 banks and the 12 credit unions, respectively, in this study. This table also shows the value of the deposits at all 24 of these institutions as of those dates.

## Methodology Overview

Through this and future research documenting checking account practices, the Pew Safe Checking 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 pages, and fee schedules posted online or available in the branches of financial institutions. Pew researchers collected these documents for study in October 2011 and October 2010. Data are solely based on banks' and credit unions' paper and online disclosures and do not incorporate statements made in the press, advertisements, and promotional or verbal communications. The only exception pertains to current press reports used to document banks' decisions to end debit card usage fees after the data-collection period had ended.

### Identifying Which Banks and Credit Unions to Study

The financial institutions studied in 2011 were the 12 largest banks by domestic deposit volume and the 12 largest credit unions by share and deposit volume. The FDIC defines domestic deposit volume as “the sum of all domestic office deposits, including demand deposits, money market deposits, other savings deposits, and time deposits.”<sup>61</sup> Share and deposit volume for credit unions refers to the total value of

deposits from members and nonmembers. Data on deposit volume for banks and credit unions are from the FDIC and the National Credit Union Association (NCUA), respectively, and were current as of June 30, 2011. One bank in the top 12 by domestic deposit volume, the Bank of New York Mellon, was excluded from our analysis because it did not offer consumer checking accounts. The 13th bank, Capital One, was added in its stead. The 12 banks studied held 46 percent of all domestic deposits at FDIC-insured institutions. The 12 credit unions studied held 15 percent of all shares and deposits at NCUSIF-insured institutions.

The financial institutions studied in 2010 were the 10 largest banks as identified by their holding companies' deposit volume. For instance, Citigroup was listed as one of the top 10 bank holding companies by deposit volume, and Pew's research staff identified its subsidiary bank, Citibank, for data collection. All deposit volume data came from PaymentsSource and were current as of October 2010. The 10 largest bank holding companies held nearly 60 percent of all bank holding company deposits, and their affiliated retail banks held 42 percent of all domestic deposits at FDIC-insured institutions as of June 30, 2010.

When building the list of banks to study in 2011, Pew's research team switched from using PaymentsSource data to FDIC data. While the PaymentsSource

data, which were collected from financial institutions, were accurate and reliable, Pew decided that it would be best to move to FDIC data because it is more accessible, more commonly used in other studies of financial institutions, and more easily available to the public. All 10 of the retail banks Pew identified and studied using the PaymentsSource data in 2010 also merited inclusion in the 2011 study using FDIC data.

Due to state-by-state variations in many checking account terms and fees, Pew identified 237 distinct accounts offered by the 12 banks in the study. For the 12 credit unions, 37 distinct accounts were identified. In the previous study, 265 distinct checking accounts were offered by the 10 banks.

### Collecting Data from Financial Institutions

Information about checking accounts' fees, terms, and conditions was spread across various bank Web pages and documents, many of which were not readily available. When trying to find checking account information and documents—such as an account agreement, account agreement addendum, or fee schedule—the avenues of investigation listed below were used to find data. Pew determined that the following ranking of data locations represented a progression from the most to least accessible locations for information:

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

For this report’s data, Pew collected and saved all account documents and information over a three-week period in October 2011. For the 2010 data, Pew used the same method over a two-week period in October 2010. All percentages computed in this report have been rounded to the nearest whole number.

### Classifying Variables Based on Source

The varying methods outlined in the previous overview for obtaining information about the checking accounts examined by Pew form the basis for how Pew classified each individual piece of data. Data were labeled according to the first category on this list where they could be found. 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 on the Bank Web Site
- Data Found in Fee Schedule Available Only Through Search of Bank Web Site
- Data Found in Account Agreement or Addendum Available Only Through Search of Bank Web Site
- Data Found in Fee Schedule Available Only by Visiting Bank Branch
- Data Found in Account Agreement or Addendum Available Only by Visiting Bank Branch
- Data Not Available in Writing Either on a Document or on the Bank Web Site

### Determining How Many Checking Accounts There Were to Consider

Financial institutions frequently had different versions of their account disclosures for the different states in which they operate. Therefore, the terms, conditions, and fees for their accounts varied between different states (and sometimes between different parts of the same state). For example, one bank had nine different fee schedules in October 2011, each one valid in a different set of states. Because of this, while a customer might see only four accounts advertised on that bank's Web site, Pew was able to determine that this institution actually offered 17 distinct checking accounts.

In some circumstances, however, even though a financial institution might have multiple versions of its disclosure documents, the terms, conditions, and fees for a particular account might be the same across different documents and groups of states. In these cases, where all of the policies and fees were literally the same, Pew's researchers consolidated those states' versions of an account type into one account. For example, if Generic Bank's "Basic Checking CT,NJ,NY" had the exact same policies and fees as Generic Bank's "Basic Checking DE,MD,PA," then Pew's researchers treated that as one distinct account: Generic Bank's "Basic Checking, CT,DE,MD,NJ,NY,PA."

This process yielded the information that the 12 banks studied in 2011 offered 237 checking accounts, and the 12 credit unions studied that year offered 37 checking accounts.

### **Determining the Total Page Length of Account Disclosures**

The length of an account's disclosures includes the sum of the length of all such documents associated with the account, including an account agreement, addenda to that agreement, a fee schedule, amendments to that fee schedule, and any other supporting disclosure documents provided by the financial institution. When computing the length of disclosures, blank pages were excluded from the count, but cover pages, tables of contents, etc., were included. If an institution scanned in documents so that two pages, with separate page numbers, were resized to fit on a single pdf page, they were counted as two pages. Separate documents that were appended to the end of a relevant pdf document were not counted (i.e., when one bank saved its account agreement and its guide to deposit advance in one pdf document, but the two documents had different cover pages and page numberings). Each document was counted just once, even if, for example, an addendum was attached to the end of an account agreement and was also available as a separate document.

# Endnotes

1 The 2011 data represent 237 checking accounts offered by the 12 largest American banks by domestic deposit volume as of June 30, 2011 (collectively holding 46 percent of domestic deposits at all Federal Deposit Insurance Corporation-insured institutions), and 37 checking accounts offered by the 12 largest American credit unions by deposit volume as of June 30, 2011 (collectively holding 15 percent of deposits at all NCUSIF-insured institutions). The 2010 data represent 265 checking accounts offered by the 10 largest American retail banks by their bank holding companies' deposits as of October 2010 (those 10 retail institutions collectively holding 42 percent of domestic deposits at all FDIC-insured institutions). When building the list of banks to study in 2011, Pew's research team switched from using PaymentsSource data (as done for 2010) to FDIC data. While the PaymentsSource data, which that organization collected from financial institutions, were accurate and reliable, Pew decided that it would be best to move to FDIC data because it is more accessible, more commonly used in other studies of this industry, and more easily available to the public. By expanding to look at the top 12 retail banks, all 10 of the institutions that Pew identified and studied using the PaymentsSource data in 2010 also merited inclusion in the 2011 study using FDIC data.

2 Federal Deposit Insurance Corporation, "FDIC National Survey of Unbanked and Underbanked Households," Federal Deposit Insurance Corporation, December 2009, available at: [http://www.fdic.gov/householdsurvey/full\\_report.pdf](http://www.fdic.gov/householdsurvey/full_report.pdf). FILES: 2009 American Community Survey 1-Year Estimates (United States), ACS Demographics and Housing United States/prepared by the U.S. Census Bureau, 2009. [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_09\\_1YR\\_DP5&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_09_1YR_DP5&prodType=table). The FDIC estimates that in 2009 there were 17,000,000 adult Americans who were unbanked—in other words, who lacked a deposit account at a bank or credit union. The U.S. Census Bureau's American Community Survey estimated that in 2009 there were 232,509,573 adult Americans total. This means that 7.31 percent of adult Americans were unbanked (i.e., had no checking account). Conversely, 92.69 percent of adult Americans in 2009 had a checking account.

3 Pew Health Group, "Slipping Behind: Low-Income Los Angeles Households Drift Further from the Financial Mainstream," October 2011, available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe\\_Banking\\_Opportunities\\_Project/Slipping%20Behind.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe_Banking_Opportunities_Project/Slipping%20Behind.pdf).

4 Finkle, Victoria. "Banks Lost \$3.6 Billion in Overdraft Revenue in 2011—Moebs," *American Banker*, Jan. 25, 2012, [http://www.americanbanker.com/issues/177\\_17/overdraft-regulation-e-checking-account-fees-1046060-1.html?zkPrintable=true](http://www.americanbanker.com/issues/177_17/overdraft-regulation-e-checking-account-fees-1046060-1.html?zkPrintable=true).

5 Length of disclosure is one of the most variable features tracked in our study; for banks, it ranged from 21 to 153 pages. This is comparable to the 2010 range of 21 to 181 pages. Therefore, the median was very sensitive to the proportion of all accounts represented by each bank. Adding two new banks to the 2011 study, both of which were below 2010's median, shifted the aggregate figure down. Excluding the two new banks produced a median disclosure length of 97 pages. Additionally, some of the banks with the longest disclosures offered fewer distinct accounts in 2011, which dampened their effect on the final median. Therefore, the 2011 median figure of 69 pages is not directly comparable to 2010's figure of 111 pages.

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

7 See *supra* 2.

8 See *supra* 3.

9 The FDIC is both a federal bank safety-and-soundness regulator, overseeing the more than 4,000 state-chartered banks that are not members of the Federal Reserve System, and is also the administrator of the Deposit Insurance Fund that guarantees consumer deposits at participating banks. The overwhelming majority of banks in the United States are members of the FDIC's Deposit Insurance Fund—some 7,523 institutions as of June 30, 2011.

FDIC, "Who Is the FDIC?" Federal Deposit Insurance Corporation, Aug. 11, 2010, available at <http://www.fdic.gov/about/learn/symbol/index.html>.

FDIC, "Deposits of All FDIC-Insured Institutions: National Totals by Charter Class (Data as of June 30, 2011)," Federal Deposit Insurance Corporation, available via "Summary Tables" starting at <http://www2.fdic.gov/sod/>.

10 The National Credit Union Administration, which supervises the more than 4,500 federally chartered credit unions, also administers the National Credit Union Share Insurance Fund, which guarantees members' deposits at participating credit unions (federal and state chartered). The overwhelming majority of credit unions in the United States participate in the NCUSIF—7,239 institutions as of June 30, 2011.

NCUA, "5300 Call Report Quarterly Data (June 2011)," National Credit Union Administration, June 30, 2011, available at <http://www.ncua.gov/DataApps/Documents/QCR201106.zip>.

11 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C.S. § 5581. While areas of this report may give credit to the Federal Reserve for changes to Regulation E, that regulation, along with Truth in Savings and Truth in Lending regulations, must now be changed by the Consumer Financial Protection Bureau, which has rulemaking authority.

12 See *supra* 5.

13 Overdraft penalty plans are short-term advances made for a fee by the bank to cover an overdrawn checking account.

14 An extended overdraft penalty fee is charged when a customer overdrafts and does not deposit enough money to cover the overdraft plus the fee and return the account to a positive balance within a set number of days.

15 "Pew Charitable Trusts Checking Account Disclosure Box Evaluation Focus Groups, Summary Report," Alan Newman Research, April 29, 2011.

16 Truth in Savings Act, 12 U.S.C.S. § 4301 *et seq.*

17 Sunstein, Cass R. "Memorandum for the Heads of Executive Departments and Agencies: Informing Consumers Through Smart Disclosure," Executive Office of the President: Office of Management and Budget, Sept. 8, 2011, available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf>.

18 The Automated Clearinghouse is an electronic network used by financial institutions to transfer money.

19 12 C.F.R. § 1005.17(b) (effective Feb. 7, 2013). This regulation is currently published under 12 C.F.R. 205.17(b). The Electronic Fund Transfer Act rulemaking authority was transferred from the Federal Reserve to the Consumer Financial Protection Bureau by the Dodd-Frank Act.

20 In its 2011 *Hidden Risks* report, Pew reported that 9 of the 10 studied banks disclosed an overdraft transfer plan. At that time, one bank disclosed an overdraft transfer fee on the fee schedule available in its branches, but the banker at that branch informed Pew's researchers that the bank made overdraft transfer plans available only to holders of legacy accounts from another institution it had purchased; the accounts in the Pew study were not eligible for overdraft transfer. However, upon further reflection, this year the Safe Checking in the Electronic Age Project decided that Pew's data analysis must interpret only what is written on a bank's disclosure document, not any additional data provided verbally at the time of acquiring the document, since a consumer cannot always guarantee having a banker on hand to supply a helpful piece of information that functionally amends a fee schedule. The fee schedule in question listed an overdraft transfer fee. Therefore, from the consumer's perspective, in October 2010 all 10 of the banks in Pew's study *disclosed* an overdraft transfer plan.

21 12 C.F.R. § 1005 App. A-9.

22 Center for Responsible Lending (CRL), "Banks Collect Overdraft Opt-Ins Through Misleading Marketing," April 2011, available at <http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/CRL-OD-Survey-Brief-final-2-4-25-11.pdf>.

23 In 2011, 11 of the 12 banks studied disclosed a maximum number of overdraft penalty fees that a customer could incur in a single day. In that same year, only 1 of the 10 studied credit unions that had overdraft penalty plans disclosed a daily cap on the number of overdraft penalty fees that could be incurred.

24 These figures are calculated using the median overdraft penalty fee and the median maximum cap on overdraft charges per day.

25 SunTrust does not disclose a minimum negative balance required to trigger an overdraft penalty fee. It does, however, disclose a similar provision. SunTrust has a minimum overdraft transaction size required to trigger an overdraft penalty fee. Since this bank is unique among studied institutions in the construction of its overdraft penalty fee trigger, SunTrust's numbers are not included in overall tallies in the text of this report.

26 12 C.F.R. § 204.2(d)(2).

27 Moebs Services, "Overdraft Fee Revenue Falls as Banks Raise Overdraft Prices." Jan. 18, 2012, press release available at <http://www.businesswire.com/news/home/20120118005349/en/Overdraft-Fee-Revenue-Falls-Banks-Raise-Overdraft>.

28 See *supra* 4.

29 Moebs Services, "Banks Lower Overdraft Fees as Consumers Choose to Opt-In," Dec. 8, 2010, press release available at <http://www.moebs.com/PressReleases/tabid/58/ctl/Details/mid/380/ItemID/197/Default.aspx>.  
Center for Responsible Lending, see *supra* 22.

30 FDIC, "Overdraft Payment Programs and Consumer Protection: Final Overdraft Payment Supervisory Guidance," FIL-81-2010, Nov. 24, 2010, available at <http://www.fdic.gov/news/news/financial/2010/fil10081.pdf>.

31 *Ibid*.

32 FDIC, “FDIC Study of Bank Overdraft Programs,” November 2008, available at [http://www.fdic.gov/bank/analytical/overdraft/FDIC138\\_Report\\_Final\\_v508.pdf](http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf).

33 This annual percentage rate was calculated using a principal of \$36 (the median size of a transaction that causes an overdraft, according to the FDIC) and an interest repayment of \$35 (the median size of an overdraft penalty fee, according to Pew’s research). Pew set the repayment period in this equation as seven days, since banks typically assess an extended overdraft penalty fee after a balance is negative for seven days.

34 See *supra* 22.

35 See *supra* 3.

36 See *supra* 2.

37 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).

38 The Overdraft Protection Act of 2009: hearing before House Committee on Financial Services, 111<sup>th</sup> Congress 7-9 (2009) (statement of Nessa Feddis, vice president and senior counsel, American Bankers Association).

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

40 12 C.F.R. § 1026.52(b). This regulation was originally published under 12 C.F.R. § 226.52(b). The Truth in Lending Act rulemaking authority was transferred from the Federal Reserve to the CFPB by the Dodd-Frank Act.

41 Unfair or Deceptive Acts or Practices, 74 Fed. Reg. 5498 (Jan. 29, 2009); statement for the Federal Trade Commission’s (FTC) Credit Practices Rule, 49 Fed. Reg. 7743 (March 1, 1984).

42 Final Rule, Unfair or Deceptive Acts or Practices, 74 Fed. Reg. 5498 (Jan. 29, 2009); FTC Policy Statement on Deception (Oct. 14, 1983).

43 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C.S. § 5531(d).

44 See *supra* 30.

45 *Gutierrez v. Wells Fargo*, 730 F. Supp. 2d 1080, 1112, 19 (N.D. Cal. 2010).

46 In his opinion, the judge in *Gutierrez* found that “[t]he only motives behind the challenged practices were gouging and profiteering,” and that 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*, 730 F. Supp. 2d 1080, 1112, 19 (N.D. Cal. 2010).

47 *In re Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333 (J.P.M.L. 2009), available at: <http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=626+F+Supp.+2d+1333>. Initial consolidation of actions sharing common questions of fact led to subsequent consolidation of additional lawsuits to be heard by the United States District Court for the Southern District of Florida. Additional information can be found on legal citation sites.

48 *In re Checking Account Overdraft Litig.*, 2011 U.S. Dist. LEXIS 135014 (S.D. Fla. 2011) – Bank of America settled for \$410 million. *Trombley v. Nat’l City Bank*, 2011 U.S. Dist. LEXIS 137898 (D.D.C. 2011) – National City Bank settled for \$13.8 million. *Schulte v. Fifth Third Bank*, 2011 U.S. Dist. LEXIS 83423 (N.D. Ill. 2011) – Fifth Third Bank settled for \$9.5 million. Voreacos, David, and Laurence Viele Davidson. “JPMorgan Will Pay \$110M in Overdraft Fee Case,” Bloomberg, Feb. 6, 2012, available at <http://www.bloomberg.com/news/2012-02-06/jpmorgan-agrees-to-pay-110-million-to-settle-overdraft-fee-gouging-case.html>. In addition to Chase’s settlement for \$110 million, two other banks, Union Bank and Associated Bank, also settled in this case for \$35 million and \$13 million, respectively.

49 Electronic Fund Transfer Act, 15 U.S.C.S. § 1693b.

50 “The legislative history of the [Electronic Fund Transfer Act] EFTA makes clear that the Board (now the CFPB) has broad regulatory authority. According to the Senate Report, regulations are ‘essential to the act’s effectiveness’ and ‘[permit] the Board to modify the act’s requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act’s basic protections continue to apply.’” Federal Reserve Electronic Fund Transfers Rule, Staff Commentary, 74 Fed. Reg. 59,033 (Nov. 17, 2009) (alteration in original) (quoting S. REP. NO. 95-1273, at 26 (1978)).

51 Because it is possible to opt out of SunTrust’s binding arbitration requirement, it was omitted from the calculations in this section. In both the 2010 and 2011 studies, SunTrust allowed its customers to reject the arbitration clause in its deposit agreement, as long as the customer sent in a particularly worded letter to a specific SunTrust location within 45 days of opening an account at the bank.

52 Federal Arbitration Act, 9 U.S.C.S. § 2.

53 *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (U.S. 2011). In a 5-4 decision, the Supreme Court reversed the 9th Circuit’s holding that a class-action waiver under a consumer contract of adhesion was unconscionable when it held that the Federal Arbitration Act preempted California state law. *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665 (U.S. 2012). The Federal Arbitration Act dictates that arbitration clauses are enforceable unless there is a strong statutory mandate from Congress stating otherwise.

54 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C.S. § 5518.

55 In *Hidden Risks*, the median monthly fee was quoted as \$8.95. The calculation for that figure includes accounts that disclosed “\$0.00” as their monthly fee—so-called “free checking” accounts. Here that median fee is reported as \$10 by using the original 2010 data to recalculate the median monthly fee for only those accounts that have a non-zero monthly fee. Pew made this change to reflect the actual monthly fees that are charged to customers and not a median lowered by the inclusion of “free checking” accounts. The same method of computation was used for the 2011 data.

56 In *Hidden Risks*, the median stop payment fee was reported as \$29. However, for many fees that cover numerous accounts, the size of the fee is most accurately expressed as a range; for example, a bank may charge a lower fee the first time it is incurred in a 12-month period, but might increase the fee for subsequent charges. Therefore, it is possible to compute a median of both the lower and higher end of a fee’s range. The \$29 stop payment fee reported for 2011 was the median of the range’s lower end for that fee. The median of the higher end of the range was \$30. In 2010, the lower-end median was reported in order to give the benefit of the doubt to financial institutions, but, upon further reflection, Pew believes that using the higher-end number, which captures the normal, not-discounted and not-waived fee amounts, is more accurate.

57 In *Hidden Risks*, Pew researchers included in the tally of each account’s additional service fees any fees listed on an institution’s fee schedule that would not be included in Pew’s disclosure box. For this report, Pew’s researchers excluded from that tally of other service fees any fees that clearly did not apply to checking accounts. This might include, for example, fees for safe-deposit boxes, money market accounts, or mortgage products. This slight change in methodology was necessitated largely by the addition in 2011 of the 12 credit unions which typically include the fees for all of their financial products on the same fee schedule. Because of this methodology change, a perfect comparison cannot be made between the 2010 and 2011 data points for other service fees at banks.

58 In *Hidden Risks*, the median monthly fee was quoted as \$8.95. The calculation for that figure includes accounts that disclosed “\$0.00” as their monthly fee—so-called “free checking” accounts. Here that fee has been changed to \$10 by using the original 2010 data to recalculate the median monthly fee for only those accounts that have a non-zero monthly fee. We made this change to reflect the actual monthly fees that are charged to customers and not a median lowered by the inclusion of “free checking” accounts. The same method of computation was used for the 2011 data.

59 Wells Fargo canceled its debit card usage fee before any customer had incurred it. SunTrust and Regions banks refunded the fee to any customers who had incurred it before it was canceled. Chase and BB&T canceled debit card usage fees after testing them for a subset of their accounts. HSBC dropped the fee but did not disclose if it had refunded it.

Siegel Bernard, Tara. “In Retreat, Bank of America Cancels Debit Card Fee,” *The New York Times*, November 1, 2011, available at <http://www.nytimes.com/2011/11/02/business/bank-of-america-drops-plan-for-debit-card-fee.html>.

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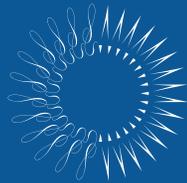
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60 In *Hidden Risks*, Pew called the “deposited item returned fee” the “returned check fee.” The name of the fee was amended in this report to reflect that customers may incur this fee for unsuccessfully attempting to deposit several different types of payments, not just checks.

61 FDIC, see “Deposits Held in Domestic Offices” in “Total Deposits,” *Institution Directory: ID Map & Definitions*, Federal Deposit Insurance Corporation, available via “ID Map and Definitions” starting at <http://www2.fdic.gov/idasp/index.asp>.



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