

A report from  THE PEW CHARITABLE TRUSTS

| May 2015



# Checks And Balances

2015 update

# The Pew Charitable Trusts

**Susan K. Urahn**, *executive vice president*

**Travis Plunkett**, *senior director*

## Team members

**Andrew Blevins**, *associate*

**Joy Hackenbracht**, *research officer*

**Thaddeus King**, *officer*

**Rachel Siegel**, *senior associate*

**Susan Weinstock**, *director*

## External reviewer

The report benefited from the insights and expertise of external reviewers, Steve Brobeck, executive director of the Consumer Federation of America, and Informa Research Services, Inc. Although they reviewed the report, they do not necessarily endorse its findings or conclusions.

## Acknowledgments

The project team thanks Steven Abbott, Sultana Ali, Jennifer V. Doctors, David Merchant, and Mark Wolff for providing valuable feedback on the report, and Dan Benderly, Sara Flood, and Thad Vinson for design and Web support. Many thanks to our other former and current colleagues who made this work possible.

---

## For further information, please visit:

[pewtrusts.org/banking](https://pewtrusts.org/banking)

---

**Cover photos:** Getty Images

---

**Contact:** Mark Wolff, director, communications

**Email:** [mwolff@pewtrusts.org](mailto:mwolff@pewtrusts.org)

**Phone:** 202-540-6390

---

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 invigorate civic life.

# Contents

## 1 About the series

## 2 Overview

## 2 Disclosure policies

Disclosure best practice **3**

Complete summary disclosure box adopted **3**

Disclosure good practices **3**

Summary disclosure box attempted **3**

Overdraft default option identified **4**

Debit overdraft penalty fee amount disclosed **5**

Overdraft transfer fee amount disclosed **5**

Top 3 Banks: Disclosure Practices **6**

Figure 6: Overview of Bank Disclosure Best and Good Practices, 2015 **7**

## 9 Overdraft policies

Overdraft best practices **10**

ATM overdrafts declined **10**

Debit point-of-sale overdrafts declined **10**

No reordering of transactions from high-to-low dollar amount **11**

Overdraft good practices **12**

Limited reordering of transactions from high-to-low dollar amount **12**

Threshold amount before triggering an overdraft **13**

No extended overdraft fee **13**

Limited number of overdraft fees charged in one day **14**

Top 3 Banks: Overdraft Policies **15**

Figure 15: Overview of Bank Overdraft Best and Good Practices, 2015 **16**

## 18 Dispute resolution policies

Dispute resolution best practices **18**

No mandatory binding arbitration **18**

No class-action waiver clause **18**

No loss, costs, and expenses clause **19**

Dispute resolution good practices **20**

Arbitration opt-out provision **20**

No jury trial waiver clause **20**

Small-claims arbitration exemption **21**

Top 3 Banks: Dispute Resolution **22**

Overview of bank dispute resolution best and good practices **23**

25	Figure 23: Overview of Best and Good Practices, 2015
27	Conclusion
28	Methodology
32	Endnotes

## About the series

This report is the fifth in a series by The Pew Charitable Trusts examining key checking account terms and conditions. The previous reports:

- *Hidden Risks: The Case for Safe and Transparent Checking Accounts* (2011) examined the disclosures from the 10 largest banks in the United States by deposit volume.
- *Still Risky: An Update on the Safety and Transparency of Checking Accounts* (2012) reviewed the disclosures from the 12 largest banks and the 12 largest credit unions.
- *Checks and Balances: Measuring Checking Accounts' Safety and Transparency* (2013) rated the 50 largest banks on how well their disclosure, overdraft, and dispute resolution practices meet Pew's policy recommendations.
- *Checks and Balances: 2014 Update* again rated the 50 largest banks and looked at trends in the market.

## Overview

Checking accounts are essential financial products, used by 9 in 10 American households, and they need to be safe, fair, and transparent.<sup>1</sup> Yet the formal disclosure documents outlining account fees, terms, and conditions are often long, unintelligible, and opaque. Overdraft and transaction processing practices can result in surprise fees, and arbitration terms can limit a customer's legal rights in the event of a dispute.

Three times since 2013, The Pew Charitable Trusts has evaluated the disclosure, overdraft, and dispute resolution policies and practices of the largest retail banks in the United States. (See the Methodology for details on how these data are collected and verified.) These institutions hold approximately 66 percent of all domestic deposits. Pew's Model Summary Disclosure Box for Checking Accounts served as the template for rating each bank's disclosure documents.<sup>2</sup> We used each bank's fee schedule, disclosure documents, account agreement, and other supplemental materials to determine whether the bank engaged in best or good practices for overdraft and dispute resolution.

Pew defines "best practices" as clearly disclosed terms that most thoroughly:

- Provide checking accountholders with clear and concise disclosure about fees and terms.
- Reduce the incidence of overdrafts and eliminate practices that maximize overdraft fees.
- Allow consumers to choose the method by which they resolve a problem with their bank, rather than requiring pre-dispute binding arbitration.

By contrast, good practices are those that provide some protection to consumers but are not as expansive or effective as best practices.

This study, the third in the *Checks and Balances* series, examines the practices of 45 of the nation's 50 largest banks as well as trends among the 32 banks that have been reviewed in all three reports.

To ensure that all checking accounts are safe and transparent, Pew has developed a set of policy recommendations and urges the Consumer Financial Protection Bureau (CFPB) to write new rules requiring financial institutions to:

- Summarize key information about terms and fees in a concise, uniform format.
- Provide accountholders with clear, comprehensive terms and pricing information for all available overdraft options.
- Make overdraft penalty fees reasonable and proportional to the financial institution's costs in providing the overdraft loan.
- Post deposits and withdrawals in a fully disclosed, objective, and neutral manner that does not maximize overdraft fees.
- Prohibit, in checking account agreements, pre-dispute mandatory binding arbitration clauses, which keep accountholders from accessing courts to challenge unfair and deceptive practices or other legal violations.

## Disclosure policies

Currently, the median disclosure for checking account agreements and fee schedules is 40 pages long. Because of this length and complexity, many consumers find the disclosures to be of limited use. This section focuses on practices that promote clear, concise, and transparent disclosure of account terms and conditions, making it easier for customers to understand their accounts and comparison shop.

The Consumer Financial Protection Bureau should:

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

## Disclosure best practice

### Complete summary disclosure box adopted

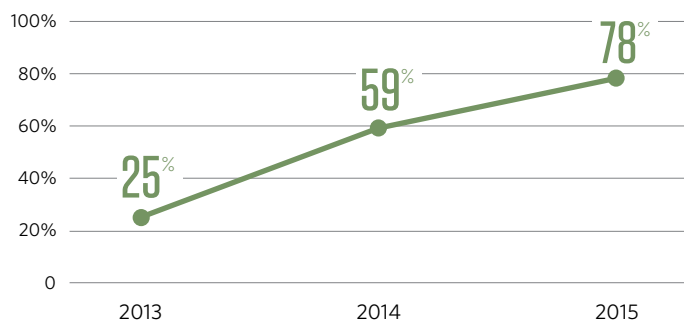
A best-practice summary disclosure box clearly lays out the following:

- Overdraft language clearly stating that, by default and unless the consumer elects otherwise, ATM and point-of-sale overdrafts are not permitted and will be declined at no cost to the accountholder.
- Alternatives to overdraft penalty service—an opt-in feature in which consumers agree that debit card transactions that overdraw their accounts will be processed by the bank for a fee—are clearly defined, such as not electing to enroll in overdraft service or being able to choose a lower-cost program that covers overdrafts by transferring funds from one account to another.
- The order in which a bank posts debits and credits to an account.

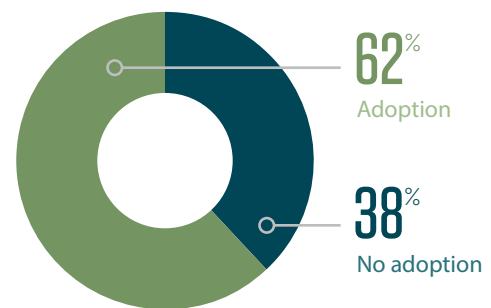
Figure 1

## Percentage of Banks That Have Adopted a Complete Summary Disclosure Box

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



© 2015 The Pew Charitable Trusts

## Disclosure good practices

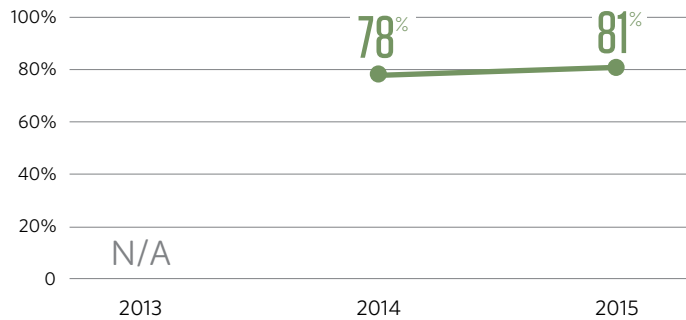
### Summary disclosure box attempted

Several banks have developed summary disclosure boxes without input from Pew that meet some, but not all, of the disclosure criteria.

Figure 2

## Percentage of Banks That Have Adopted an Incomplete or Complete Summary Disclosure Box

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that get credit for the best-practice designation for a complete summary disclosure box automatically receive this good practice.

© 2015 The Pew Charitable Trusts

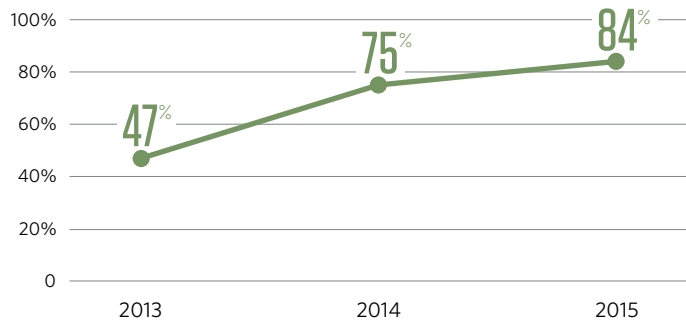
### Overdraft default option identified

Federal rules require that consumers affirmatively opt in to overdraft coverage for debit card transactions at an ATM or point of sale. Under the rules, if a consumer does not opt in, any transaction that would overdraw the account is automatically declined at no cost to the account holder. But in 2014, Pew survey research found that 52 percent of consumers who had overdrawn their checking accounts in the past year as the result of a debit card transaction did not recall opting in to the service.<sup>3</sup> For this reason, banks should clearly disclose the default: that any ATM and point-of-sale transactions that would overdraw an account will be declined at no cost.

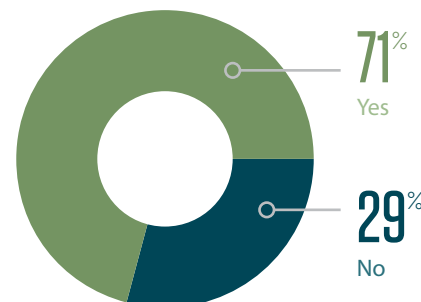
Figure 3

## Percentage of Banks That Clearly Identify the Overdraft Default Option or Do Not Charge a Debit Overdraft Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for debit overdraft, which means there are no opt-in terms to disclose, and those that received best-practice designations for declining ATM and point-of-sale overdrafts, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts



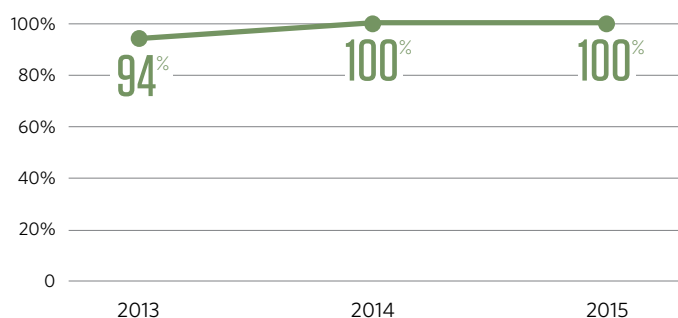
## Debit overdraft penalty fee amount disclosed

At most banks, when consumers overdraw their accounts with a debit card, the financial institution will charge an overdraft penalty fee, the most expensive form of overdraft service: The median fee among the banks studied is \$35. Clear disclosure of the existence and size of penalty fees is important to helping customers make informed choices and understand their overdraft options.<sup>4</sup>

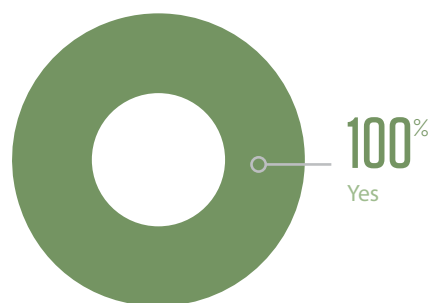
Figure 4

### Percentage of Banks That Clearly Identify the Overdraft Penalty Fee or Do Not Charge an Overdraft Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft, which makes disclosure of the overdraft penalty fee redundant, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts

At most banks, when consumers overdraw their accounts with a debit card, the financial institution will charge an overdraft penalty fee, the most expensive form of overdraft service: The median fee among the banks studied is \$35.

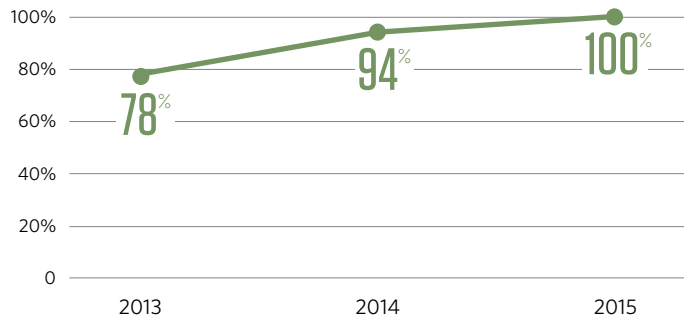
## Overdraft transfer fee amount disclosed

Many banks offer an overdraft transfer service, which links consumers' savings accounts or lines of credit to their checking accounts. When a transaction would result in a negative checking account balance, the bank processes the transaction but also transfers funds from the linked account to prevent the overdraft. The median fee among the 40 banks offering this service is \$10—significantly cheaper than overdraft penalty service. This is another example of the importance of clear disclosure for customers considering overdraft options.<sup>5</sup>

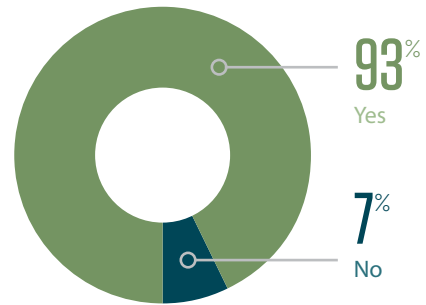
Figure 5

## Percentage of Banks That Clearly Identify the Overdraft Transfer Fee or Do Not Charge an Overdraft Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft, which makes disclosure of the overdraft transfer fee redundant, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts

### Top 3 Banks: Disclosure Practices

As of June 30, 2014, the Federal Deposit Insurance Corp. reported that the three largest banks in the United States—Bank of America, Chase, and Wells Fargo—hold one-third (33 percent) of all domestic deposits. Because these three banks cover such a large segment of the market, their policies are particularly relevant to this analysis. With regard to disclosure, all three have adopted a summary disclosure box meeting Pew's best-practice standards and so also meet all of the good-practice standards.

Figure 6

## Overview of Bank Disclosure Best and Good Practices, 2015

All banks in the 2015 study ordered by number of best, then good, practices, and alphabetically when tied

Bank name	Disclosure					Total best practice (out of 1)	Total good practices (out of 4)
	Best practice	Good practices					
	Adopts a summary disclosure box that meets Pew's criteria	Attempts a summary disclosure box but omits key information	Identifies the overdraft default option	Overdraft penalty fee amount disclosed	Overdraft transfer fee amount disclosed		
Proportion	62%	73%	71%	100%	93%		
Ally	★	✓	✓	✓	✓	★ = 1	✓ = 4
Bank of America	★	✓	✓	✓	✓	★ = 1	✓ = 4
Bank of Oklahoma	★	✓	✓	✓	✓	★ = 1	✓ = 4
BB&T	★	✓	✓	✓	✓	★ = 1	✓ = 4
BBVA Compass	★	✓	✓	✓	✓	★ = 1	✓ = 4
Capital One Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
Chase	★	✓	✓	✓	✓	★ = 1	✓ = 4
Citibank	★	✓	✓	✓	✓	★ = 1	✓ = 4
Citizens Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
Comerica	★	✓	✓	✓	✓	★ = 1	✓ = 4
Fifth Third Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
First Niagara	★	✓	✓	✓	✓	★ = 1	✓ = 4
First Tennessee	★	✓	✓	✓	✓	★ = 1	✓ = 4
Frost	★	✓	✓	✓	✓	★ = 1	✓ = 4
HSBC	★	✓	✓	✓	✓	★ = 1	✓ = 4
KeyBank	★	✓	✓	✓	✓	★ = 1	✓ = 4
M&T Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
People's United Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
PNC	★	✓	✓	✓	✓	★ = 1	✓ = 4
Santander	★	✓	✓	✓	✓	★ = 1	✓ = 4
SunTrust	★	✓	✓	✓	✓	★ = 1	✓ = 4
TCF Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
TD Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
U.S. Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4

Continued on next page

Bank name	Disclosure					Total best practice (out of 1)	Total good practices (out of 4)
	Best practice	Good practices					
	Adopts a summary disclosure box that meets Pew's criteria	Attempts a summary disclosure box but omits key information	Identifies the overdraft default option	Overdraft penalty fee amount disclosed	Overdraft transfer fee amount disclosed		
Proportion	62%	73%	71%	100%	93%		
Union Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
USAA	★	✓	✓	✓	✓	★ = 1	✓ = 4
Webster Bank	★	✓	✓	✓	✓	★ = 1	✓ = 4
Wells Fargo	★	✓	✓	✓	✓	★ = 1	✓ = 4
BMO Harris Bank	★	✓	✓	✓	✓	★ = 0	✓ = 4
Charles Schwab Bank	★	✓	✓	✓	✓	★ = 0	✓ = 4
First Republic	★	✓	✓	✓	✓	★ = 0	✓ = 3
Huntington	★	✓	✓	✓	✓	★ = 0	✓ = 3
Popular	★	✓	✓	✓	✓	★ = 0	✓ = 3
Regions	★	✓	✓	✓	✓	★ = 0	✓ = 3
Associated Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
Bank of the West	★	✓	✓	✓	✓	★ = 0	✓ = 2
City National Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
Commerce Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
E*Trade Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
FirstMerit	★	✓	✓	✓	✓	★ = 0	✓ = 2
Prosperity Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
Umpqua Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
Zions Bank	★	✓	✓	✓	✓	★ = 0	✓ = 2
Hudson City	★	✓	✓	✓	✓	★ = 0	✓ = 1
Scottrade Bank	★	✓	✓	✓	✓	★ = 0	✓ = 1
East West Bank	×	×	×	×	×	N/A	N/A
First Citizens Bank	×	×	×	×	×	N/A	N/A
New York Community Bank	×	×	×	×	×	N/A	N/A
Signature	×	×	×	×	×	N/A	N/A
Synovus	×	×	×	×	×	N/A	N/A

★ Engages in this best practice   ★ Does not engage in this best practice   ✓ Engages in this good practice   ✓ Does not engage in this good practice   × No response

© 2015 The Pew Charitable Trusts

## Overdraft policies

The Consumer Financial Protection Bureau, in a study of checking account overdrafts, states that customers of U.S. financial institutions paid more than \$34 billion in account fees in 2012.<sup>6</sup> The report also notes that 61 percent of consumer fees are from overdrafts or nonsufficient fund events.<sup>7</sup> Figure 7 shows the distribution of overdraft fees charged by the 45 banks Pew studied.

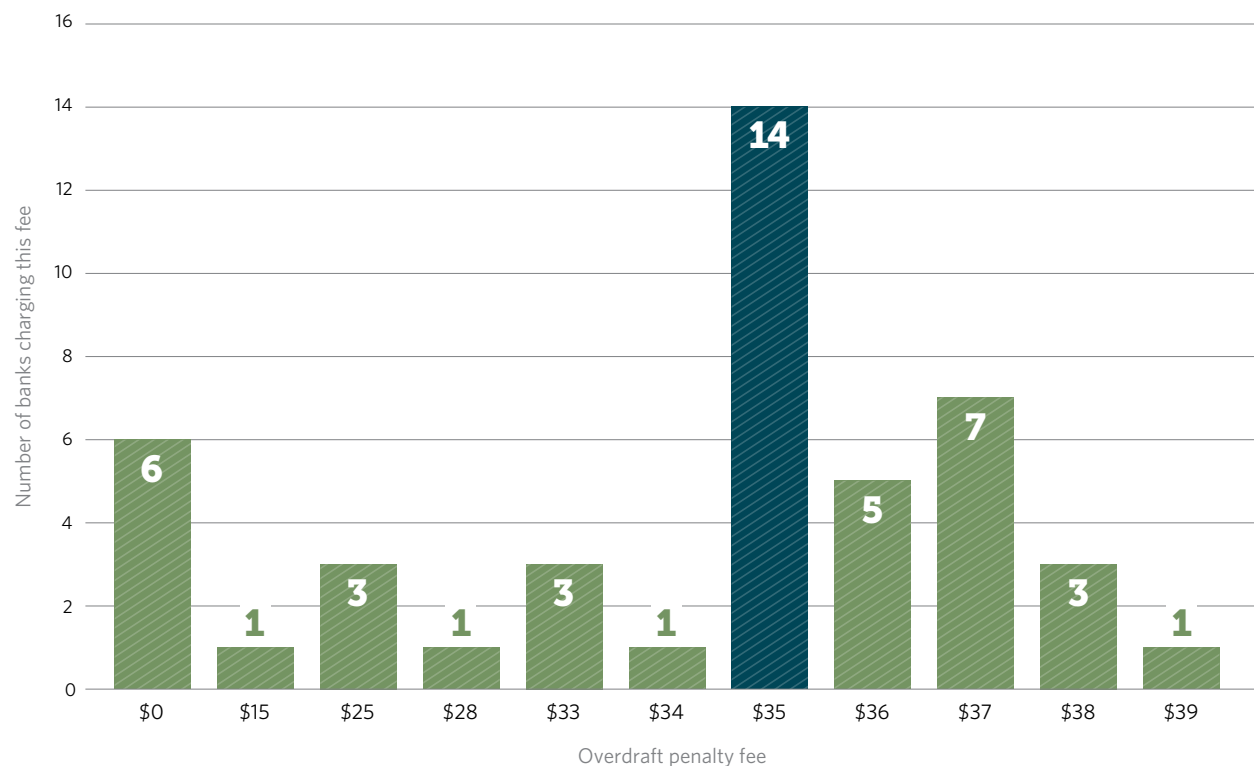
Another important factor affecting consumers is the method each bank uses to process transactions. Some banks reorder transactions from largest to smallest dollar amount during processing, which can reduce the account balance more quickly and result in more overdrafts than other methods, such as posting transactions chronologically. This analysis focuses on practices that limit consumers' exposure to these unanticipated and damaging fees.

The Consumer Financial Protection Bureau should:

- Require that overdraft penalty fees be reasonable and proportional to the institution's costs in providing the overdraft loan or to the size of the violation.
- Require depository institutions to post deposits and withdrawals in a fully disclosed, objective, and neutral manner, such as in chronological order, which does not maximize overdraft fees.

Figure 7

### Distribution of Bank Overdraft Penalty Fees, 2015 Most large banks charge between \$35 and \$38 per overdraft



Six of the banks studied—Ally, Charles Schwab, Citibank, First Republic, HSBC, and USAA—do not charge a debit card overdraft penalty fee.

## Overdraft best practices

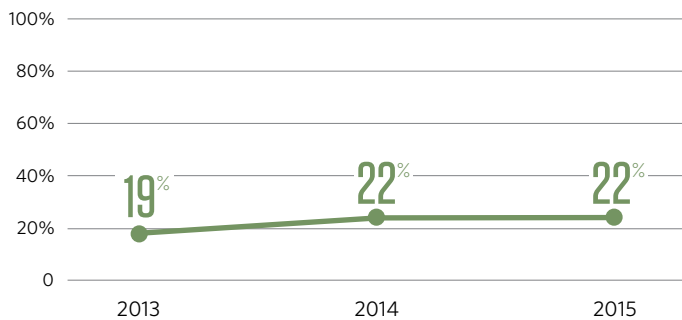
### ATM overdrafts declined

Because ATM transactions happen in real time, banks can protect their customers from unexpected overdraft fees by simply not allowing ATM withdrawals that would overdraw an account and instead declining those transactions at no cost.<sup>8</sup>

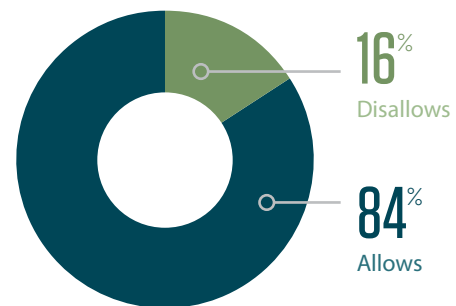
Figure 8

### Percentage of Banks That Do Not Allow ATM Overdrafts

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft, which significantly lessens the harm of overdrawing at an ATM, automatically get credit for this best practice.

© 2015 The Pew Charitable Trusts

The CFPB reported in its July 2014 “Data Point: Checking Account Overdraft,” “Transactions that lead to overdrafts are often quite small. In the case of debit card transactions, the median amount that leads to an overdraft fee is \$24.”

### Debit point-of-sale overdrafts declined

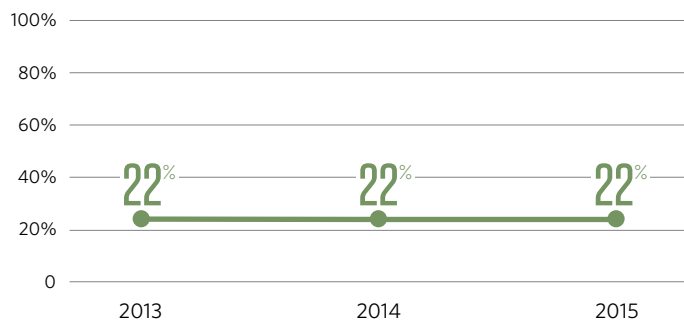
As with ATM transactions, banks can protect their customers from unanticipated debit card point-of-sale overdraft fees by simply declining these transactions at no cost to the consumer.

In a positive market development, three of the 45 banks studied now offer an account that does not allow overdrafts of any kind. KeyBank provides disclosures on its website for its “Hassle-Free” account; the websites for Bank of America and Union Bank provide overviews but not complete disclosures for their “SafeBalance” and “Access” accounts, respectively.

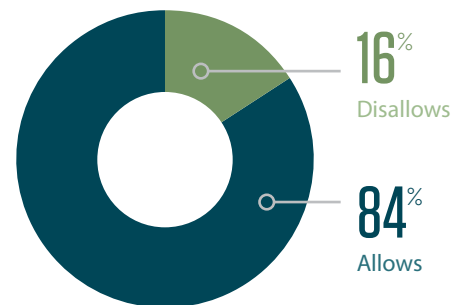
Figure 9

## Percentage of Banks That Do Not Allow Debit Point-of-Sale Overdrafts

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft, which significantly lessens the harm of overdrawing at the point-of-sale, automatically get credit for this best practice.

© 2015 The Pew Charitable Trusts

Almost one-third (31 percent) of households without a bank account cited high or unpredictable account fees as one reason for being unbanked, according to the Federal Deposit Insurance Corp.'s 2013 *National Survey of Unbanked and Underbanked Households*, published in October 2014.

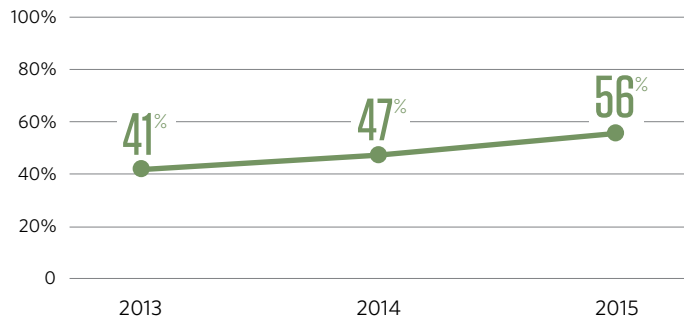
### No reordering of transactions from high-to-low dollar amount

Banks can maximize the number of overdrafts charged by rearranging transactions and processing them by dollar amount, from largest to smallest. Banks that do not reorder transactions from high to low help protect their customers from costly and unexpected fees.

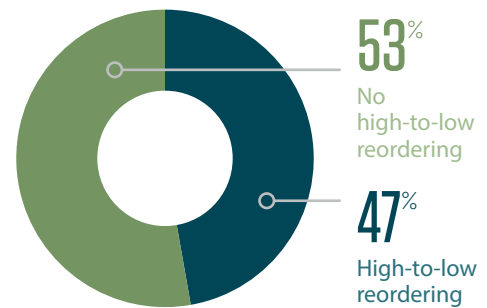
Figure 10

## Percentage of Banks That Do Not Reorder Any Transactions From High to Low by Dollar Amount or Do Not Charge an Overdraft Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft or charge no more than one fee per day automatically get credit for this best practice.

© 2015 The Pew Charitable Trusts

## Overdraft good practices

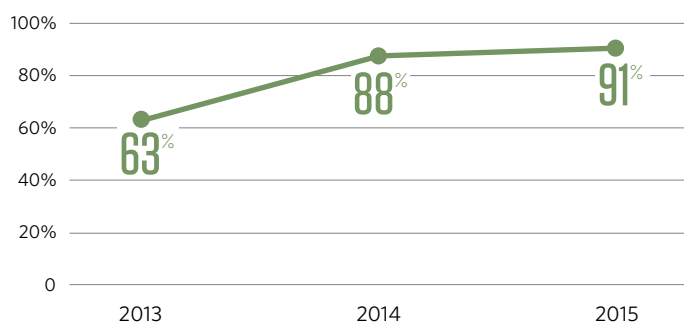
### Limited reordering of transactions from high-to-low dollar amount

Some banks rearrange only transactions that are less common, such as paper checks, from high to low but process other transactions chronologically or by low-to-high dollar amount. This can significantly lessen the harm of reordering but may still expose customers to more overdrafts than more neutral methods.

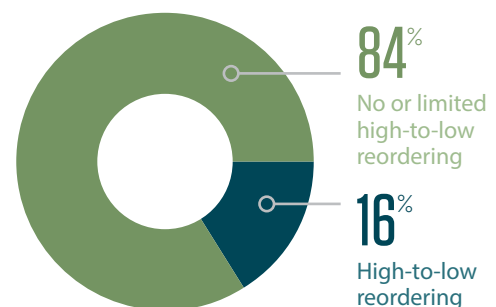
Figure 11

## Percentage of Banks With No or Limited High-to-Low Transaction Reordering or That Do Not Charge an Overdraft Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not reorder any transactions, those that do not charge a fee for overdraft, and those that charge no more than one fee per day automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts



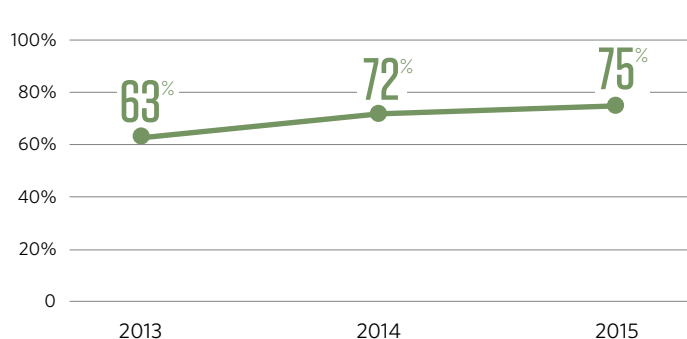
## Threshold amount before triggering an overdraft

Some banks have threshold, or *de minimis*, policies that can protect customers from incurring a fee from a very small overdraft. These policies are generally implemented as balance or item thresholds, though an institution could offer both. A balance threshold policy sets a maximum amount an account can be overdrawn at the end of the day before a fee is charged. Twenty-five of the banks studied have this policy, and the median threshold is \$5. An item threshold policy sets a limit on the size of a transaction that can incur an overdraft fee, ensuring that a small purchase, such as of a cup of coffee, that overdraws an account does not come with a costly fee. Eight of the banks studied use this practice, and the median limit is also \$5.

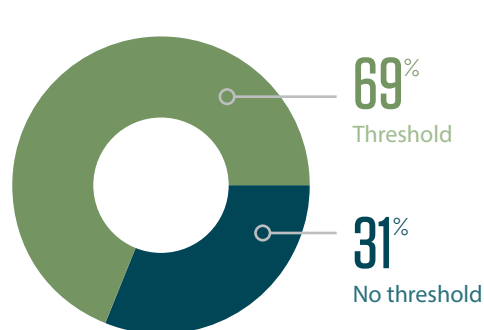
Figure 12

### Percentage of Banks With a Threshold, or *de Minimis*, Amount or That Do Not Charge an Overdraft Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft, which makes a *de minimis* policy unnecessary, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts

## No extended overdraft fee

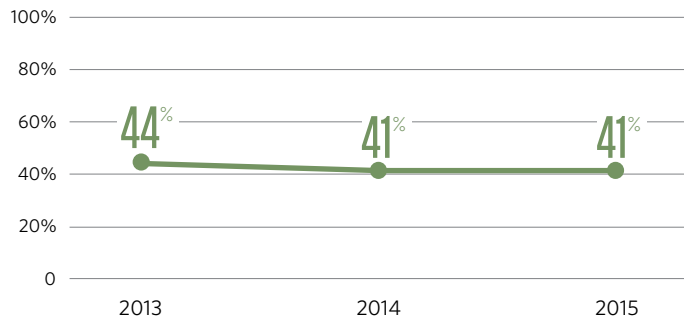
Many banks charge an additional fee if a customer does not repay the amount of the overdraft within a certain period. Twenty-six of the banks studied charge such a fee. The median amount is \$15, and the median number of days before the fee is debited is five, with a range of three to 31 days. Additionally, 14 banks count only business days, 11 count calendar days, and one does not delineate its policy. Banks that do not charge these fees make it easier for customers to regain a positive balance and help to ensure that a customer will not get caught in a cycle of debt.

According to the Consumer Financial Protection Bureau, among large banks examined in its June 2013 *Study of Overdraft Programs*, "An account that remained overdrawn for 20 days could have been assessed fees ranging from \$15 to \$140."

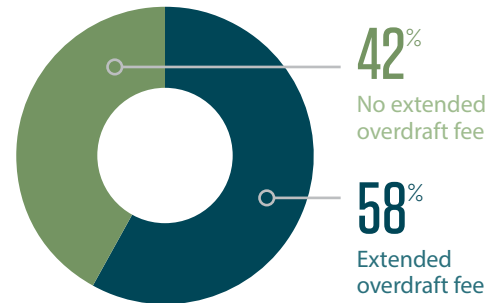
Figure 13

## Percentage of Banks Without an Extended or Any Overdraft Penalty Fee

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Not all banks charge an extended fee, and those that do not may not disclose the fee as none or \$0. Banks that do not disclose any extended overdraft fee get credit for this good practice.

© 2015 The Pew Charitable Trusts

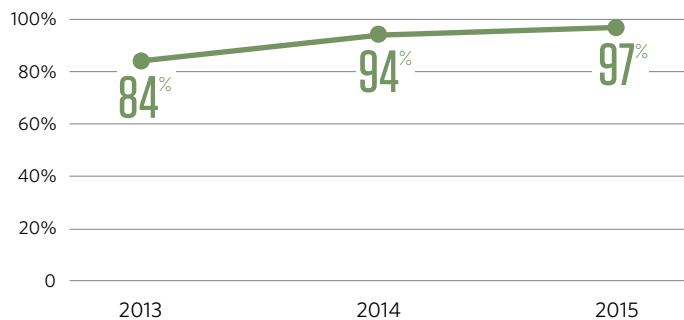
### Limited number of overdraft fees charged in one day

Many banks limit the number of overdraft fees a consumer can be charged in one day. Among the banks studied, 41 disclose a median daily limit of five fees, with a range of one to 10.

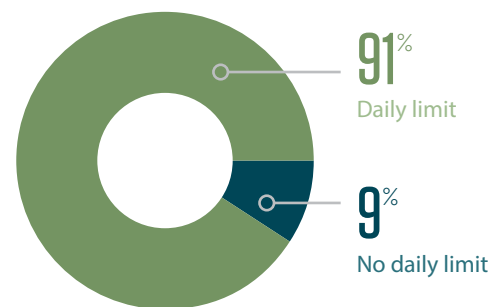
Figure 14

## Percentage of Banks That Limit the Daily Number of Overdraft Fees or Do Not Charge Them

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not charge a fee for overdraft, which makes limiting the number of fees per day moot, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts

## Top 3 Banks: Overdraft Policies

Because the big three banks—Bank of America, Chase, and Wells Fargo—hold one-third of the deposits in the United States, their overdraft policies, as disclosed in their respective account agreements, are particularly important for the purposes of this analysis.

### **Allowing overdraft**

- Bank of America does not allow customers to overdraw at the point of sale but does allow them to withdraw “emergency cash” at an ATM in excess of the available balance for an overdraft item fee, which is, in essence, ATM overdraft.
- Chase does not allow customers to overdraw at an ATM but does allow point-of-sale overdrafts.
- Wells Fargo allows overdraft at both.

### **Transaction reordering and threshold amounts**

- Wells Fargo does not reorder any transactions from high to low.
- Bank of America and Chase reorder some types of transactions from high to low.
- Wells Fargo and Chase have a threshold amount to trigger an overdraft; below that amount, no fee is charged.

### **Extended and number of overdraft fees**

- Wells Fargo does not charge an extended overdraft fee.
- Bank of America and Chase charge an extended overdraft fee.
- All three banks limit the number of overdraft fees a customer can incur in one day.

Figure 15

## Overview of Bank Overdraft Best and Good Practices, 2015

All banks in the 2015 study ordered by number of best, then good, practices, and alphabetically when tied

Bank name	Overdraft							Total best practices (out of 3)	Total good practices (out of 4)
	Best practices			Good practices					
	No ATM overdrafts	No debit point-of-sale overdrafts	No high-to-low transaction reordering	Limited high-to-low transaction reordering	Threshold amount to trigger an overdraft	No extended overdraft fee	Limited number of overdraft fees per day		
Proportion	16%	16%	53%	84%	69%	42%	91%		
Ally	★	★	★	✓	✓	✓	✓	★ = 3	✓ = 4
Charles Schwab Bank	★	★	★	✓	✓	✓	✓	★ = 3	✓ = 4
HSBC	★	★	★	✓	✓	✓	✓	★ = 3	✓ = 4
USAA	★	★	★	✓	✓	✓	✓	★ = 3	✓ = 4
Citibank	★	★	★	✓	✓	✓	✓	★ = 3	✓ = 3
First Republic	★	★	★	✓	✓	✓	✓	★ = 3	✓ = 3
BB&T	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 4
Frost	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 4
TCF Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 4
Umpqua Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 4
Wells Fargo	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 4
Bank of the West	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
BMO Harris Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
Chase	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
City National Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
Huntington	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
M&T Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
Santander	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
Scottrade Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
U.S. Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
Zions Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 3
Bank of America	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 2
BBVA Compass	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 2
Hudson City	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 2

Continued on next page

Bank name	Overdraft							Total best practices (out of 3)	Total good practices (out of 4)
	Best practices			Good practices					
	No ATM overdrafts	No debit point-of-sale overdrafts	No high-to-low transaction reordering	Limited high-to-low transaction reordering	Threshold amount to trigger an overdraft	No extended overdraft fee	Limited number of overdraft fees per day		
Proportion	16%	16%	53%	84%	69%	42%	91%		
KeyBank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 2
Associated Bank	★	★	★	✓	✓	✓	✓	★ = 1	✓ = 1
Capital One Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 4
Fifth Third Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 4
Bank of Oklahoma	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
Citizens Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
Commerce Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
First Niagara	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
First Tennessee	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
People's United Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
PNC	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
Regions	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
Union Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 3
Comerica	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 2
FirstMerit	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 2
Popular	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 2
SunTrust	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 2
TD Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 2
Webster Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 2
E*Trade Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 1
Prosperity Bank	★	★	★	✓	✓	✓	✓	★ = 0	✓ = 0
East West Bank	×	×	×	×	×	×	×	N/A	N/A
First Citizens Bank	×	×	×	×	×	×	×	N/A	N/A
New York Community Bank	×	×	×	×	×	×	×	N/A	N/A
Signature	×	×	×	×	×	×	×	N/A	N/A
Synovus	×	×	×	×	×	×	×	N/A	N/A

★ Engages in this best practice   ★ Does not engage in this best practice   ✓ Engages in this good practice   ✓ Does not engage in this good practice   × No response

Note: Bank of America states that customers will generally not be allowed to overdraw at an ATM but may be allowed to withdraw “emergency cash” at an ATM in excess of the available balance for a \$35 overdraft item fee, which is, in essence, ATM overdraft.

© 2015 The Pew Charitable Trusts

## Dispute resolution policies

Arbitration clauses are meant to limit an institution's liability and control costs, but they typically do so by preventing a customer from challenging in court unfair and deceptive practices or other violations. This study focuses on practices that ensure consumers' access to transparent and fair legal remedies that do not give an advantage to, or impose unreasonable costs on, either party.

The Consumer Financial Protection Bureau should:

- Prohibit in checking account agreements pre-dispute mandatory binding arbitration clauses, which prevent accountholders from accessing courts to challenge unfair and deceptive practices or other legal violations, impair individual rights, and potentially allow harmful practices to spread unchallenged by thorough legal or public scrutiny.

## Dispute resolution best practices

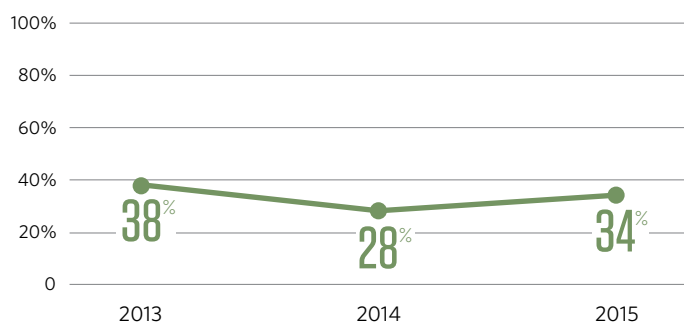
### No mandatory binding arbitration

Arbitration is a private dispute resolution process in which a third-party decision-maker resolves disputes between opposing parties. The process is binding, with little or no opportunity for appeal. Some financial institutions require accountholders to waive their right to go to court and submit to binding arbitration in the event of a dispute. Banks that do not include these terms ensure that their customers have full access to all available legal remedies.<sup>9</sup>

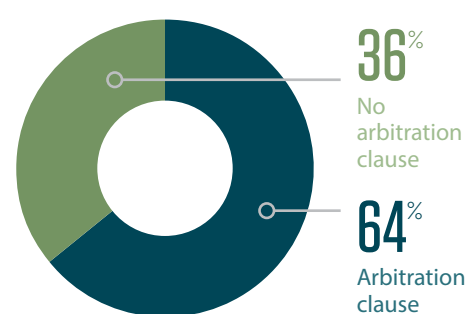
Figure 16

### Percentage of Banks Without a Binding Arbitration Clause

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



© 2015 The Pew Charitable Trusts

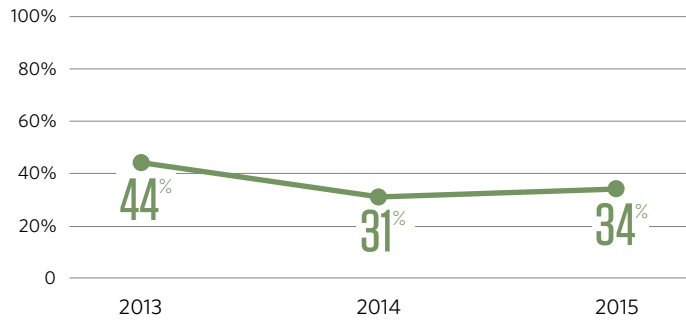
### No class-action waiver clause

Class-action waiver clauses preclude customers from joining together to try to hold a financial institution accountable for injuries that may be small individually but amount to significant harm when brought in aggregate. Banks without these clauses allow their customers an opportunity to have small but widespread grievances addressed and to hold institutions responsible for damages.<sup>10</sup>

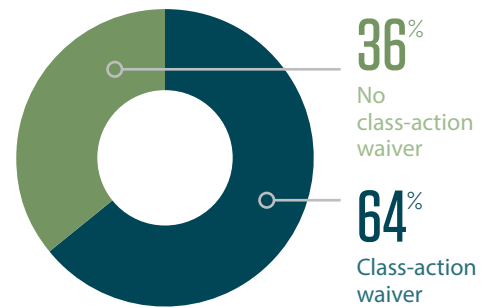
Figure 17

## Percentage of Banks Without a Class-Action Waiver Clause

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



© 2015 The Pew Charitable Trusts

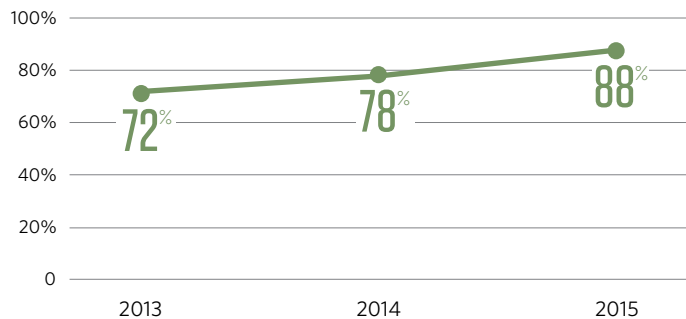
## No loss, costs, and expenses clause

Loss, costs, and expenses clauses require consumers who pursue a dispute about their account to pay their bank's costs, no matter the outcome of the case. Although it is unclear whether these clauses are legally enforceable, they may discourage customers from seeking a legal remedy. Account agreements without this language allow consumers to address grievances without worry of incurring the bank's large expenses.

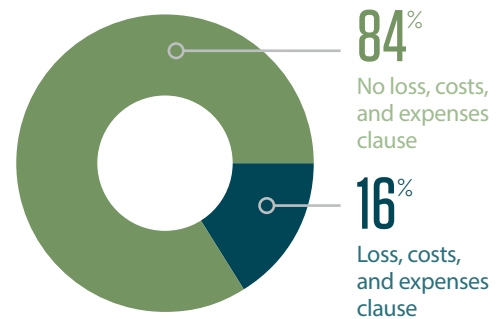
Figure 18

## Percentage of Banks Without a Loss, Costs, and Expenses Clause

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



© 2015 The Pew Charitable Trusts

## Dispute resolution good practices

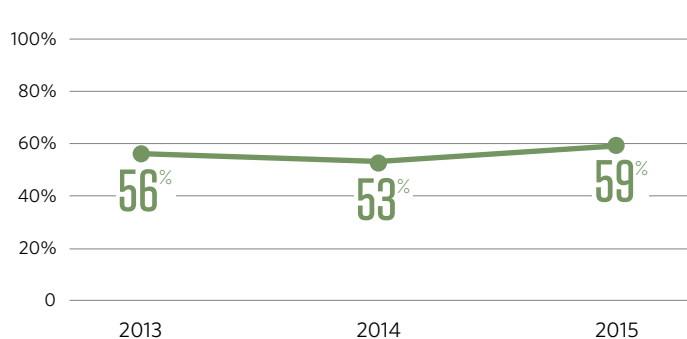
### Arbitration opt-out provision

Some banks with arbitration clauses include an opt-out provision that gives customers the opportunity to retain their legal rights, typically by writing to the bank within a certain number of days after either the account is opened or the arbitration clause is added to the agreement.<sup>11</sup> The median number of days prior to the opt-out expiring is 45.

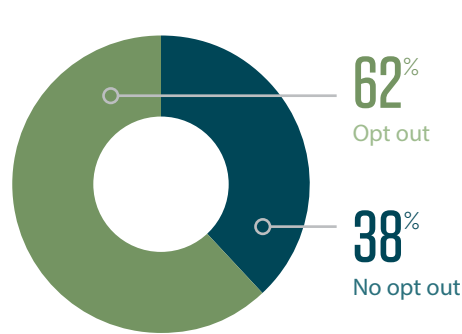
Figure 19

### Percentage of Banks With an Opt-Out Provision or That Do Not Require Arbitration

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not have arbitration clauses in their account agreements, which makes including an arbitration opt-out moot, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts

According to the CFPB's March 2015 *Arbitration Study*, "In the checking account market, larger banks tend to include arbitration clauses in their consumer checking contracts, while mid-sized and smaller banks and credit unions tend not to."

### No jury trial waiver clause

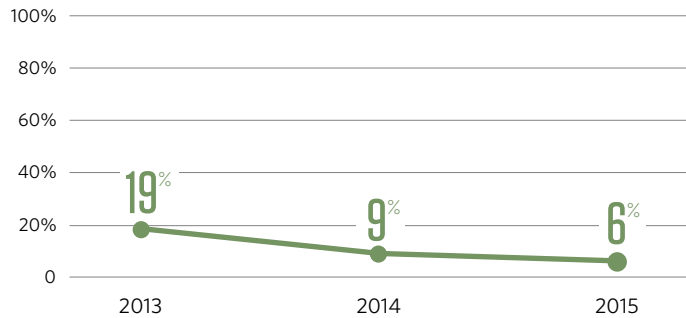
By definition, if a bank has a mandatory binding arbitration clause, customers must waive their right to a jury trial. Additionally, some banks without an arbitration clause require customers to waive the right to a jury trial in favor of a bench trial.



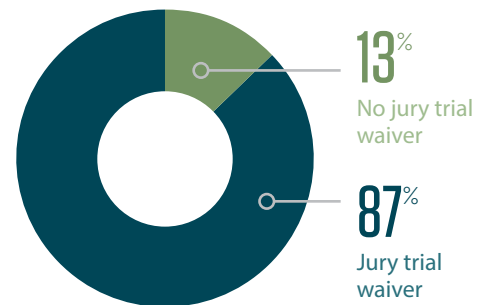
Figure 20

## Percentage of Banks Without a Jury Trial Waiver Clause

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



© 2015 The Pew Charitable Trusts

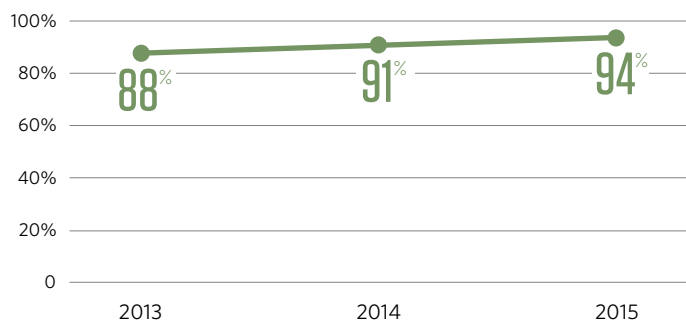
## Small-claims arbitration exemption

A small-claims arbitration exemption provision allows a customer who is otherwise limited to arbitration to bring a complaint for less than a specified amount to small-claims court for resolution.<sup>12</sup>

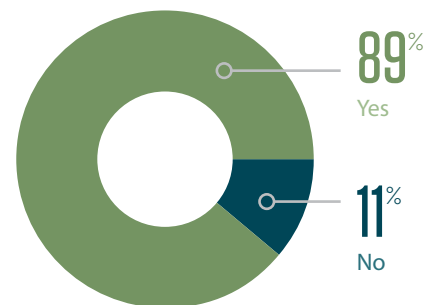
Figure 21

## Percentage of Banks With a Small-Claims Exemption or Without Required Arbitration

3-year trend across the 32 banks common to all studies



Among the 45 banks in the 2015 study



Note: Banks that do not have arbitration clauses in their account agreements, which makes including a small-claims exemption moot, automatically get credit for this good practice.

© 2015 The Pew Charitable Trusts

### Top 3 Banks: Dispute Resolution

Of the big three banks, Chase and Wells Fargo include pre-dispute mandatory arbitration clauses in their account agreements, which prevent customers from resolving disputes through a jury trial, although both of those banks and Bank of America have an exemption from arbitration for small claims.

- Chase discloses an arbitration opt-out provision.
- Bank of America discloses that disputes in California are resolved by judicial reference—a process decided by a private entity but filed in Superior Court with the rights of discovery and appeal—and discloses bench trials in other states. Because Bank of America does not require pre-dispute arbitration, no arbitration opt-out or small-claims exemption is needed.
- Chase and Wells Fargo ban class-action suits.
- None of these banks includes a loss, costs, and expenses clause.

Figure 22

## Overview of Bank Dispute Resolution Best and Good Practices, 2015

All banks in the 2015 study ordered by number of best, then good, practices, and alphabetically when tied

Bank name	Dispute resolution						Total best practices (out of 3)	Total good practices (out of 3)
	Best practices			Good practices				
	No mandatory binding arbitration	No class-action waiver clause	No loss, costs, and expenses clause	Arbitration opt-out provision	No jury trial waiver clause	Small-claims arbitration exemption		
Proportion	36%	36%	84%	62%	13%	89%		
Ally	★	★	★	✓	✓	✓	★ = 3	✓ = 3
Bank of Oklahoma	★	★	★	✓	✓	✓	★ = 3	✓ = 3
Commerce Bank	★	★	★	✓	✓	✓	★ = 3	✓ = 3
Popular	★	★	★	✓	✓	✓	★ = 3	✓ = 3
Bank of America	★	★	★	✓	✓	✓	★ = 3	✓ = 2
City National Bank	★	★	★	✓	✓	✓	★ = 3	✓ = 2
Fifth Third Bank	★	★	★	✓	✓	✓	★ = 3	✓ = 2
First Republic	★	★	★	✓	✓	✓	★ = 3	✓ = 2
Frost	★	★	★	✓	✓	✓	★ = 3	✓ = 2
TD Bank	★	★	★	✓	✓	✓	★ = 3	✓ = 2
Hudson City	★	★	★	✓	✓	✓	★ = 2	✓ = 3
Prosperity Bank	★	★	★	✓	✓	✓	★ = 2	✓ = 3
Capital One Bank	★	★	★	✓	✓	✓	★ = 2	✓ = 2
HSBC	★	★	★	✓	✓	✓	★ = 2	✓ = 2
People's United Bank	★	★	★	✓	✓	✓	★ = 2	✓ = 2
Charles Schwab Bank	★	★	★	✓	✓	✓	★ = 2	✓ = 0
BMO Harris Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 2
Chase	★	★	★	✓	✓	✓	★ = 1	✓ = 2
Citizens Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 2
E*Trade Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 2
First Niagara	★	★	★	✓	✓	✓	★ = 1	✓ = 2
FirstMerit	★	★	★	✓	✓	✓	★ = 1	✓ = 2
PNC	★	★	★	✓	✓	✓	★ = 1	✓ = 2
Santander	★	★	★	✓	✓	✓	★ = 1	✓ = 2
SunTrust	★	★	★	✓	✓	✓	★ = 1	✓ = 2
TCF Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 2

Continued on next page

Bank name	Dispute resolution						Total best practices (out of 3)	Total good practices (out of 3)
	Best practices			Good practices				
	No mandatory binding arbitration	No class-action waiver clause	No loss, costs, and expenses clause	Arbitration opt-out provision	No jury trial waiver clause	Small-claims arbitration exemption		
Proportion	36%	36%	84%	62%	13%	89%		
Zions Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 2
Associated Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
BB&T	★	★	★	✓	✓	✓	★ = 1	✓ = 1
BBVA Compass	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Citibank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Comerica	★	★	★	✓	✓	✓	★ = 1	✓ = 1
First Tennessee	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Huntington	★	★	★	✓	✓	✓	★ = 1	✓ = 1
KeyBank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
M&T Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Regions	★	★	★	✓	✓	✓	★ = 1	✓ = 1
U.S. Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Union Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
USAA	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Webster Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Wells Fargo	★	★	★	✓	✓	✓	★ = 1	✓ = 1
Scottrade Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 0
Umpqua Bank	★	★	★	✓	✓	✓	★ = 1	✓ = 0
Bank of the West	★	★	★	✓	✓	✓	★ = 0	✓ = 1
East West Bank	×	×	×	×	×	×	N/A	N/A
First Citizens Bank	×	×	×	×	×	×	N/A	N/A
New York Community Bank	×	×	×	×	×	×	N/A	N/A
Signature	×	×	×	×	×	×	N/A	N/A
Synovus	×	×	×	×	×	×	N/A	N/A

★ Engages in this best practice   ★ Does not engage in this best practice   ✓ Engages in this good practice   ✓ Does not engage in this good practice   × No response

Notes: Bank of America offers judicial reference—a process decided by a private entity but filed in Superior Court with the rights of discovery and appeal—in California, where the plurality of its deposits is held, and bench trials in other states. Comerica offers judicial reference in California, if arbitration is not selected, but holds the plurality of its deposits in Michigan, where the bank requires arbitration. First Republic and City National Bank offer judicial reference in California, where the plurality of their deposits are held, and arbitration with class-action waivers and no opt-out opportunity in other states. Zions Bank offers arbitration at the customer's request for disputes involving less than \$75,000 and a bench trial if arbitration is not selected; disputes of \$75,000 or more must be arbitrated.

© 2015 The Pew Charitable Trusts

Figure 23

## Overview of Best and Good Practices, 2015

All banks in the 2015 study ordered by number of best, then good, practices, and alphabetically when tied

Bank name	Disclosure		Overdraft		Dispute resolution		Total best practices (out of 7)	Total good practices (out of 11)
	Best practice	Good practices	Best practices	Good practices	Best practices	Good practices		
Ally	★	✓✓✓✓	★★★★	✓✓✓✓	★★★	✓✓✓	★ = 7	✓ = 11
HSBC	★	✓✓✓✓	★★★★	✓✓✓✓	★★★	✓✓✓	★ = 6	✓ = 10
First Republic	★	✓✓✓✓	★★★★	✓✓✓✓	★★★	✓✓✓	★ = 6	✓ = 8
Frost	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 5	✓ = 10
USAA	★	✓✓✓✓	★★★★	✓✓✓✓	★★★	✓✓✓	★ = 5	✓ = 9
Bank of America	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 5	✓ = 8
Charles Schwab Bank	★	✓✓✓✓	★★★★	✓✓✓✓	★★★	✓✓✓	★ = 5	✓ = 8
Citibank	★	✓✓✓✓	★★★★	✓✓✓✓	★★★	✓✓✓	★ = 5	✓ = 8
Bank of Oklahoma	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 4	✓ = 10
Fifth Third Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 4	✓ = 10
TD Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 4	✓ = 8
City National Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 4	✓ = 7
Capital One Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 10
TCF Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 10
BB&T	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 9
Chase	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 9
People's United Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 9
Santander	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 9
Wells Fargo	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 9
Commerce Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 8
M&T Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 8
Popular	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 8
U.S. Bank	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 8
BBVA Compass	★	✓✓✓✓	★★★	✓✓✓✓	★★★	✓✓✓	★ = 3	✓ = 7

Continued on next page

Bank name	Disclosure		Overdraft		Dispute resolution		Total best practices (out of 7)	Total good practices (out of 11)
	Best practice	Good practices	Best practices	Good practices	Best practices	Good practices		
KeyBank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 3	✓ = 7
Hudson City	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 3	✓ = 6
BMO Harris Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 9
Citizens Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 9
First Niagara	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 9
PNC	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 9
First Tennessee	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 8
SunTrust	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 8
Union Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 8
Comerica	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 7
Huntington	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 7
Webster Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 7
Zions Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 7
Umpqua Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 6
Prosperity Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 5
Associated Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 4
Scottrade Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 2	✓ = 4
Regions	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 1	✓ = 7
Bank of the West	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 1	✓ = 6
FirstMerit	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 1	✓ = 6
E*Trade Bank	★	✓✓✓✓	★☆☆	✓✓✓✓	★☆☆	✓✓✓	★ = 1	✓ = 5
East West Bank	×	×	×	×	×	×	N/A	N/A
First Citizens Bank	×	×	×	×	×	×	N/A	N/A
New York Community Bank	×	×	×	×	×	×	N/A	N/A
Signature	×	×	×	×	×	×	N/A	N/A
Synovus	×	×	×	×	×	×	N/A	N/A

★ Engages in this best practice   ★ Does not engage in this best practice   ✓ Engages in this good practice   ✓ Does not engage in this good practice   × No response

© 2015 The Pew Charitable Trusts

Figure 24

## Overview of Best and Good Practices, 2015

Proportion of practice adoption in the 2015 study

Disclosure		Overdraft		Dispute resolution	
Practice	Proportion	Practice	Proportion	Practice	Proportion
Adopts a summary disclosure box that meets Pew's criteria	62%	No ATM overdrafts	16%	No mandatory binding arbitration	36%
Attempts a summary disclosure box but omits key information	73%	No debit point-of-sale overdrafts	16%	No class-action waiver clause	36%
Identifies the overdraft default option	71%	No high-to-low transaction reordering	53%	No loss, costs, and expenses clause	84%
Overdraft penalty fee amount disclosed	100%	Limited high-to-low transaction reordering	84%	Arbitration opt-out provision	62%
Overdraft transfer fee amount disclosed	93%	Threshold amount to trigger an overdraft	69%	No jury trial waiver clause	13%
		No extended overdraft fee	42%	Small-claims arbitration exemption	89%
		Limited number of overdraft fees per day	91%		

© 2015 The Pew Charitable Trusts

## Conclusion

This third edition of *Checks and Balances* once again reveals improvement in some areas of bank policies, particularly disclosure; some policies that are mostly unchanged, such as overdraft; and some that have worsened, especially the inclusion of jury trial waivers. However, it is clear from Pew's year-over-year analyses that policymakers cannot simply wait for all financial institutions to adopt comprehensive practices which ensure that checking accounts are safe and transparent. Rather, the Consumer Financial Protection Bureau should write new rules that require financial institutions to clearly disclose important account terms and conditions, offer overdraft service in a fair and reasonable manner, and provide alternatives to pre-dispute binding arbitration, should a conflict arise.

## Methodology

Pew studied disclosures from the 50 largest banks based on domestic deposit volume as tabulated in June 2014 by the Federal Deposit Insurance Corp. Banks that did not offer checking accounts were excluded from the final list, and subsidiaries were considered with their parent companies. At each bank, the most basic checking account was chosen for analysis. The basic account that provided checks and debit cards was defined as the cheapest available to all consumers (not a specialty account for students, seniors, or the military) and one that was not online-only. For banks that have no physical branches, this last requirement was waived. When banks offered different terms in different states, Pew examined accounts in the state where the bank held the plurality of its deposits, by volume.

In November 2014, Pew examined the following disclosure documents from each financial institution's website:

- Disclosure box.
- Fee schedule.
- Account agreement.
- Screen shots of the checking home page and individual account Web pages.

If information was not available online, Pew phoned the banks' toll-free customer support numbers found on their websites to ask for the relevant information to be mailed or emailed.

Pew bases its review on published account agreements rather than in-person or phone interviews because banks are legally required to provide disclosures in writing that are clear and understandable and that form the basis for customers' contracts with their banks. This increases the likelihood that correct and complete information will be collected and helps reduce the possibility of confusion or the collection of incorrect information about a practice.

Furthermore, these are the documents that prospective checking account customers rely on when choosing among financial institutions. If these disclosures are long, confusing, poorly written, or unavailable before opening an account, or are filled with onerous terms and conditions, customers are disserved and may later incur unexpected fees or face limited options for legal recourse in the event of a dispute.

Using these methods, Pew was able to obtain full documentation for 45 of the 50 largest banks. Banks that provided only some of their disclosures were omitted from the study. The banks were rated based on Pew's policy recommendations as articulated in our 2011 and 2012 studies—*Hidden Risks* and *Still Risky*—in the areas of disclosure, overdraft, and dispute resolution policy.<sup>13</sup>

In the category of disclosure, banks were recognized for clearly disclosing the policies included in Pew's model disclosure box, without consideration of the underlying bank policies or practices. (See Figure 25.) Banks were judged to have clearly disclosed a fee or policy if the information was available from one of the following:

- The bank's checking home page.
- The Web page specific to the account.
- The schedule of fees.
- A disclosure box.

If this information was available only in the account agreement, it was not considered clearly disclosed. In addition, if a term was disclosed in a document that the bank referred to as its fee schedule but was not in proximity to the actual schedule of fees contained inside that document, it was not considered clearly disclosed.



Figure 25

## Pew's Model Disclosure Box for Checking Accounts

Basic Terms and Conditions				
Account Opening and Usage	Minimum Deposit Needed to Open Account	\$ ____		
	Monthly Fee	\$ ____		
	Requirements to Waive Monthly Fee	\$ ____ <i>Minimum combined account balance, direct deposit, or other conditions</i>		
	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 payer 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	<b>Option A: (Default)</b>	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.	
	<b>Option B: Overdraft Transfer Plan</b>	Overdraft Transfer Fee	\$ ____ per overdraft covered by a transfer from a linked savings account, line of credit, or credit card	
	<b>Option C: Overdraft Penalty Plan</b>	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>	<i>Summary of policy</i>		
	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><i>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.</i></p>		
Dispute Resolution	Dispute Resolution Agreement	<i>Summary of agreement</i>		

Figure 26

## Data Collection Methods

Banks ordered by domestic deposit volume

1	Bank of America	26	Bank of the West
2	Chase	27	First Republic
3	Wells Fargo	28	E*Trade Bank
4	Citibank	29	First Niagara
5	U.S. Bank	30	City National Bank
6	Capital One Bank	31	Popular
7	PNC	32	New York Community Bank
8	TD Bank	33	People's United Bank
9	BB&T	34	Frost
10	SunTrust	35	East West Bank
11	HSBC	36	Synovus
12	Fifth Third Bank	37	Hudson City
13	Regions	38	Bank of Oklahoma
14	Charles Schwab Bank	39	Signature
15	Citizens Bank	40	FirstMerit
16	Union Bank	41	Commerce Bank
17	BMO Harris Bank	42	First Citizens Bank
18	M&T Bank	43	Scottrade Bank
19	KeyBank	44	Associated Bank
20	USAA	45	Prosperity Bank
21	BBVA Compass Bank	46	Umpqua Bank
22	Ally	47	First Tennessee
23	Santander	48	Webster Bank
24	Comerica	49	Zions Bank
25	Huntington	50	TCF Bank

● Available online   ● Mailed/mailed   ● Information not provided

© 2015 The Pew Charitable Trusts

Pew’s policy recommendations for checking accounts form the basis for determining best and good practices for overdraft and dispute resolution practices. The banks were recognized according to what they do, so information from the account agreement and other supplemental documents is used to determine their policies. The dispute resolution score recognizes banks that keep their customers’ options open in the event of a dispute and do not use provisions such as loss, costs, and expenses clauses, which require consumers to pay their bank’s expenses, regardless of the outcome of the case, should they pursue a dispute.

Pew recommends that for checking account agreements, the Consumer Financial Protection Bureau prohibit pre-dispute mandatory binding arbitration clauses, which prevent accountholders from accessing courts to settle a conflict. In addition, Pew recommends that the CFPB study these particular clauses to determine whether they have a chilling effect by discouraging customers from trying to resolve a dispute in the first place.

Institutions new to Pew’s analysis in this report are highlighted in Figure 27. Popular, People’s United Bank, Hudson City, and Prosperity were excluded from our previous study for not providing complete accounts disclosures but did so during our most recent collection and so were included. New York Community Bank, Signature, and First Citizens Bank made their disclosures available last year but did not provide them this year. E\*Trade Bank, Scottrade Bank, and Umpqua Bank are new to the analysis; OneWest Bank, EverBank, and Susquehanna Bank dropped out of the top 50 and were excluded from this analysis.

Figure 27

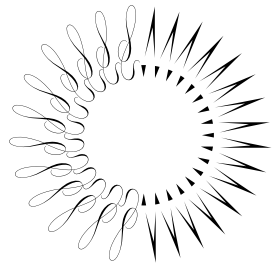
## 7 Banks Added to the 2015 Analysis

New banks, by deposit volume

Rank	Bank name	Reason for inclusion
28	E*Trade	Disclosures not previously collected
31	Popular	Disclosures not available last year
33	People's United Bank	Disclosures not available last year
37	Hudson City	Disclosures not available last year
43	Scottrade Bank	Disclosures not previously collected
45	Prosperity Bank	Disclosures not available last year
46	Umpqua Bank	New to top 50

## Endnotes

- 1 Federal Deposit Insurance Corp., *2013 National Survey of Unbanked and Underbanked Households* (October 2014), 28, [https://www.economicinclusion.gov/surveys/2013household/documents/2013\\_FDIC\\_Unbanked\\_HH\\_Survey\\_Report.pdf](https://www.economicinclusion.gov/surveys/2013household/documents/2013_FDIC_Unbanked_HH_Survey_Report.pdf).
- 2 The Pew Charitable Trusts, “Who Reads 44 Pages of Disclosures? The Need for a Disclosure Box” (April 2011), accessed January 2015, <http://www.pewtrusts.org/en/multimedia/data-visualizations/2011/long-on-words-short-on-protections--the-need-for-a-disclosure-box>.
- 3 The Pew Charitable Trusts, “Overdrawn: Persistent Confusion and Concern About Bank Overdraft Practices” (June 2014), [http://www.pewtrusts.org/-/media/Assets/2014/06/26/Safe\\_Checking\\_Overdraft\\_Survey\\_Report.pdf](http://www.pewtrusts.org/-/media/Assets/2014/06/26/Safe_Checking_Overdraft_Survey_Report.pdf).
- 4 Some banks charge a different fee under certain conditions. This median is calculated using the standard overdraft penalty fee listed in each bank’s disclosure documents.
- 5 Some banks charge a different or additional fee under certain conditions. This median is calculated using the standard overdraft transfer fee listed in each bank’s disclosure documents.
- 6 Consumer Financial Protection Bureau, *Study of Overdraft Programs: A White Paper of Initial Data Findings* (June 2013): 14–15, [http://files.consumerfinance.gov/f/201306\\_cfpb\\_whitepaper\\_overdraft-practices.pdf](http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf).
- 7 Ibid.
- 8 Bank of America did not receive credit for the ATM overdrafts best practice because its disclosures state that, while customers will generally not be allowed to overdraw at an ATM, they may be allowed to withdraw “emergency cash” at an ATM in excess of the available balance for a \$35 overdraft item fee, which is, in effect, ATM overdraft.
- 9 Some banks have different dispute resolution policies in different states: Bank of America, which received credit for the no mandatory binding arbitration best practice, discloses that it offers judicial reference, a process decided by a private entity but filed in Superior Court with the rights of discovery and appeal, in California, where the plurality of its deposits are held, and bench trials in other states; Comerica, which did not get credit for the no mandatory binding arbitration best practice, discloses that it offers judicial reference in California if arbitration is not selected, but holds the plurality of its deposits in Michigan, where arbitration is mandatory; First Republic and City National Bank, which got credit for the no mandatory binding arbitration best practice, disclose that they offer judicial reference in California, where the plurality of their deposits are held, yet require arbitration in other states; and Zions Bank, which got credit for the no mandatory binding arbitration best practice, discloses that it offers arbitration at the customer’s request for disputes involving less than \$75,000 and a bench trial if arbitration is not selected, while disputes of \$75,000 or more must be arbitrated.
- 10 First Republic and City National Bank, which got credit for the no class-action waiver clause best practice, disclose that they offer judicial reference in California, where the plurality of their deposits are held, and arbitration with class-action waivers in other states.
- 11 First Republic and City National Bank, which received credit for the arbitration opt-out provision good practice, disclose that they offer judicial reference in California, where the plurality of their deposits are held, and arbitration without an opt-out provision in other states. Zions Bank, which received credit for the arbitration opt-out provision good practice, discloses that it offers arbitration at the customer’s request for disputes involving less than \$75,000 and a bench trial if arbitration is not selected, while disputes of \$75,000 or more must be arbitrated.
- 12 Zions Bank, which received credit for the small-claims arbitration exemption good practice, discloses that it offers arbitration at the customer’s request for disputes involving less than \$75,000, which constitutes a *de facto* small-claims exemption.
- 13 The Pew Charitable Trusts, *Hidden Risks: The Case for Safe and Transparent Checking Accounts* (April 2011) [http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes\\_assets/2011/SafeCheckingPewReportHiddenRisks.pdf](http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2011/SafeCheckingPewReportHiddenRisks.pdf); The Pew Charitable Trusts, *Still Risky: An Update on the Safety and Transparency of Checking Accounts* (June 2012) [http://www.pewtrusts.org/-/media/Assets/2012/10/09/Pew\\_Safe\\_Checking\\_Still\\_Risky.pdf](http://www.pewtrusts.org/-/media/Assets/2012/10/09/Pew_Safe_Checking_Still_Risky.pdf); The Pew Charitable Trusts, *Checks and Balances: Measuring Checking Accounts’ Safety and Transparency* (May 2013) [http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes\\_assets/2013/ChecksBalancesnew.pdf](http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2013/ChecksBalancesnew.pdf); The Pew Charitable Trusts, *Checks and Balances: 2014 Update* (April 2014) <http://www.pewtrusts.org/-/media/Assets/2014/04/09/ChecksandBalancesReport2014.pdf>.



THE  
**PEW**  
CHARITABLE TRUSTS