A NEW FUNCTION OF AN OLD SYSTEM

THE EFFECT OF OVERDRAFT PROTECTION PROGRAMS ON ECONOMIC SECURITY

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GLOSSARY

**Alternative financial services (AFS)** – Also known as fringe financial services, they are services offered by providers that operate outside of traditional banks.

**Census tracts** – Small, relatively permanent statistical subdivisions of a county.

**Community banks** – Locally owned and operated financial institutions that typically operate with significantly smaller assets.

**Community Development Financial Institutions (CDFI)** – Specialized financial institutions that provide financial services to low-income communities and people on limited incomes.

**Consumer Financial Protection Bureau (CFPB)** – Federal agency responsible for consumer protection in the financial sector.

**Federal Deposit Insurance Corporation (FDIC)** – An independent agency created by the U.S. Congress to insure deposits in U.S. banks and thrifts in the event of bank failures.

**Federal Preemption** – A legal process in which any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, is superseded by federal law.

**Federal Reserve System** – The United States of America’s central banking system that conducts the nation’s monetary policy, provides and maintains an effective and efficient payments system, and supervises and regulates banking operations.

**National-chartered bank** – Financial institution chartered by the national government.

**Non-sequential transaction processing** – The process of processing transactions by size or type of transaction, rather than by time of transaction.

**Non-sufficient funds (NSF) fees** – Fees charged by depository institution (amount varies by institution) when it must return presented payments, such as checks, because of insufficient funds in the account.

**Office of Comptroller of Currency (OCC)** – An independent bureau within the United States Department of Treasury that charters, regulates, and supervises all national banks, federal savings associations, and federal branches and agencies of foreign banks.

**Overdraft fees** – Fees charged by depository institution (amount varies by institution) when it covers, or allows the processing, of a transaction that exceeds the amount available in a checking account.

**Overdraft protection programs** – Programs offered by depository institutions and that customers must opt-in which allows institutions to process an ATM/debit-card transaction that exceeds the amount available in a checking account.
Payday lending – Short-term, unsecured loan extended with high interest rates.

Predatory services – Practices that increase a person’s economic insecurity and impose unfair or abusive burdens on the individual.

Regulation B (Equal Credit Opportunity Act) – Proscribes creditors from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction including overdraft protection programs.

Regulation CC (Expedited Funds Availability Act & Check Clearing for the 21st Century Act) – Allows banks to hold deposits past a specified amount of time when an account is repeatedly overdrawn.

Regulation E (Electronic Fund Transfers Act of 1978) – A modification in federal regulations that requires financial institutions to acquire customers’ consent to “opt-in” before charging overdraft fees on ATM and debit card purchases.

State-chartered bank – Financial institution chartered by a state.

Sustained/Extended Overdraft Fees – Repeated fees charged for accounts that remain overdrawn beyond a specified period of time.

Truth in Savings Act of 1991 – A federal law designed to help promote competition between depository institutions and make it easier for consumers to compare interest rates, fees, and terms associated with savings institutions’ deposit accounts.

Usurious services – Services that extend loans at unreasonably high rates of interest, such as payday loans.
INTRODUCTION

Economic insecurity is often associated with physical, social, and psychological negative outcomes. As we discuss in this paper, bank overdraft fees can often exacerbate the economic insecurity of families that leads to negative health outcomes. The national complaint system of the Consumer Financial Protection Bureau (CFPB), a federal agency responsible for consumer protection in the financial sector, reports 1,900 total complaints regarding overdraft fees. This number likely underrepresents the true total of people affected by overdrafts as submitting a complaint to the CFPB is a level of complexity that many people likely choose to avoid or are unaware they can take. The CFPB only started to accept complaints about checking accounts and associated fees in 2012. At the same time, the number also sheds light on avoidable incidents concerning overdraft fees that could have exacerbated the economic insecurity of families. The following is a complaint from a Connecticut resident:

It all started when my account was negative due to hardship. An error through a gas station app made 3 transactions on my bank account. I understand that the bank charged a fee of $35.00 for each transaction... I did make a check deposit to clear the payments, but the bank put a hold on for days and kept charging me for more overdraft fees... They charged me over $400.00 only in fees...

At a time when around 40 percent of Americans report not being able to cover a $400 emergency expense, the complaint above succinctly summarizes how $400 in unexpected overdraft fees can increase a family’s economic insecurity. Under the guise of “protection,” economically vulnerable consumers are pushed out of safe and sound financial services as banks earn a lucrative revenue stream from overdraft protection programs.

The economic system in the United States, which includes financial institutions, has historically excluded marginalized communities and, to this day, continues to create insecurity for such communities. Thus, when we discuss improving economic security in the context of overdraft fees, we must consider that current negative economic outcomes are a purposeful result of the unjust economic system’s structure rather than a result of individual behavior. In this paper, we focus on overdraft protection programs—a bank product that has garnered the attention of federal regulators and national consumer protection organizations—and how it is a by-product of an economic system that, by design, pushes marginalized communities into further economic insecurity.
In all, marginalized communities have consistently been under-protected by America’s economic system and overrepresented in its woes. For instance, the COVID-19 pandemic, instead of acting as an “equalizer” as many initially speculated, has deepened the existing cracks in our system and exposed sentiments that we rise and fall together as a nation as platitudes that miss how in times of crisis, it is marginalized communities that take the hardest falls. This is a particularly salient point when we look at the function of overdraft protection programs in the United States.

In this report, we review how overdraft protection programs impose costs disproportionately on low-income communities and communities of color. In the first part, we look at the history of banking practices that crowd out marginalized communities from financial services and implement higher entry and maintenance costs. In the second part, we review the progression of overdraft protection programs from a courtesy program offered on an ad hoc basis to a system used intentionally to maximize bank revenue. This part also discusses the different methods used by some banks to maximize overdraft fee revenue. In the third part, we review the legal parameters of regulating overdraft protection programs and fees at the state-level in national- and state-chartered banks. Specifically, we look at the actions that Connecticut can take to protect its residents from abusive overdraft fees. Lastly, we recommend that Connecticut begin to collect data from state-chartered banks on the following indicators:

- The total amount of overdraft fees collected yearly
- The median amount of the overdraft fee charged by bank
- The range of total overdraft fees charged per account
- The bank’s total cost of processing overdraft transactions
- The bank’s posting order policies
- What percentage of the bank’s total consumer checking accounts that are charged overdraft fees during the year
- The percentage of accounts that overdrafted in the past year that were opted-in to overdraft on ATM and non-recurring debit card transactions
- The extent of training given to employees on the institution’s overdraft and non-sufficient funds (NSF) policies, procedures, and products
- Disclosure of any personnel incentives tied to opt-in rates
- The dollar volume of consumer debit card transactions processed by the institution during the year
- Number of consumer checking accounts with overdraft fees charged categorized by zip code to which consumer account statements are mailed
- Banks’ use of deposit holds due to perceived account risk under Regulation CC

We also recommend that Connecticut follow the lead of the New York State Department of Financial Services and require Connecticut-chartered banks to stop charging overdraft fees for the remainder of the pandemic.

There has never been a more critical time to analyze how the current economic system works to push marginalized communities out of essential services like banking. As they stand currently, overdraft protection programs and fees increase the economic insecurity of communities of color and low-income communities. But, the state can implement measures that begin to correct this. The acquired data will allow Connecticut to (1) judge if the state follows the troubling national trends regarding overdraft protection programs and fees incurred within marginalized communities, (2) implement appropriate measures, within its power, to counteract harmful effects, and (3) develop informed, equitable policies that ensure marginalized communities have access to safe and sound financial services.
THE DESIGN OF BANKING PRACTICES & ECONOMIC SECURITY OF MARGINALIZED COMMUNITIES

The economic system in place has perpetuated inequities in what can be considered the pillars of economic security including but not limited to housing, education, health, and employment. Among these are financial institutions that, in theory, should provide a gateway to economic participation. For instance, banks allow individuals to build a credit score and maintain a checking account—both of which are traditional imperatives to long-term economic security. Instead, some financial institutions employ practices that crowd out marginalized communities from safe and sound financial services and also increase the communities’ economic vulnerability. Although this paper does not attempt to qualify the intent of these practices, we attribute these practices as a by-product of the design of the United States’ economic system, which encompasses financial institutions.

In this section, we detail bank practices implemented in the past few decades that restrict marginalized communities’ access to safe and sound financial services. We also detail how these practices make it prohibitively expensive and inconvenient to maintain essential banking services, such as checking accounts. Although only a few practices were found to legally function as intentionally discriminatory, we maintain that many of today’s economic systems, including that of banking and other financial institutions, pose disproportionate negative impacts on people of color and low- to moderate-income neighborhoods. Persistent efforts by banks to decrease their presence in marginalized communities contributed to the present lack of access to financial resources in such communities.

In the late 1970s, competition in capital markets and white flight led banks to close many branches in low-income neighborhoods and decrease their number of low-income customers in order to cut costs. The lack of banks in marginalized neighborhoods allowed alternative financial services (AFS) to establish roots in these same neighborhoods. These AFS, also known as fringe financial services and offered by providers that operate outside of traditional banks, were often funded by the same large, commercial banks that abandoned communities of color and low-income communities. Over thirty years later, we still observe significant disparities in the number of banks available in communities of color versus the number of AFS available. A 2018 study that examined the expansion of AFS in response to the Great Recession in census tracts—small, relatively permanent statistical subdivisions of a county—showed that there are six banks in majority-white tracts for every one bank in majority-Latinx census tracts. Likewise, there are four banks in majority-white tracts for every one bank in majority-Black tracts.
A quintessential case of this disparity in communities of color is that of Hudson City Savings Bank. In a legal dispute, documents showed the bank was “structuring its business so as to avoid the credit needs of majority-Black-and-Hispanic neighborhoods in its residential mortgage lending, and thereby engaging in acts or practices directed at prospective applicants that discouraged applicants in these neighborhoods from applying for credit.” As we see from Figure 1, which shows Hudson City Savings Bank branch locations across the New York-New Jersey region, there a small number of branches (indicated by the green circles) in majority-Black and -Hispanic neighborhoods (indicated by the red and orange shaded areas). Put simply, Hudson City Savings Bank purposely placed bank branches in communities with low or no Black and Hispanic families to avoid providing mortgage lending services to them, and so, constrained their access to banking services. Although cases in which a single bank is found to intentionally avoid placing branches in communities of color in favor of majority-white communities are rare, we still observe a general trend of financial institutions as a whole. A mapping project by New America shows that Hudson City Savings Bank’s strategy is not isolated to that particular bank but is rather in line with the overall banking industry. The maps show the number of bank branches versus AFS over different neighborhoods in large cities. We observe that in primarily-minority neighborhoods, there are a low number of bank branches and a high number of AFS, many of which are associated with usurious fees. Figure 2 shows a map of New Haven, where we observe that the number of AFS increases as the minority percentage in neighborhoods increases.
Figure 1. CFPB map of Hudson City Savings Bank branches opened or acquired 2004-Present: New York-New Jersey, Camden, and Bridgeport MSAs
Figure 2. Map of New Haven from New America’s “Mapping Financial Opportunity” report
In the 1980s, mass deregulation incentivized banks to prioritize short-term revenue maximization and wealthier clients at the expense of marginalized communities. The Great Recession of 2008 showed how such practices resulted in skewed consequences that often lay along racial and income lines. Indicators such as subprime loans, default behavior, and foreclosure rates during the recession demonstrate this point. For instance, research shows that Black and Latino families were more likely to receive subprime loans than whites were. Studies in New York City showed that neighborhood characteristics tend to be “an important predictor of default behavior.” Specifically, research shows that “default rates for home purchase mortgages are higher in census tracts with larger shares of [B]lack residents.” It is important to note that such correlation is likely a result of differential treatment of Black neighborhoods that is unobserved in research, such as discriminatory behavior by banks, whether through bank policy or individual bank employees, rather than individual behavior of borrowers.

The costs of banking, including overdraft fees, also present a barrier to many. This is particularly concerning as research demonstrates that the unit cost of banking has not budged since 1900, despite technological advances that should have made banking cheaper. It suggests that the lack of a decrease in the costs of banking stem from the financial sector using said savings to boost profits rather than pass the savings onto consumers. As a result, low-income communities and communities of color are not only disproportionately targeted by banks with questionable loan practices but also have higher costs of basic but essential services such as checking accounts. Available data suggests that when low-income communities and communities of color gain access to financial services, it is often more expensive than it would be in majority-white communities. In a national survey of over 2,000 bank customers, 80 percent of white customers reported paying no bank fees in a typical month, compared to 60 percent of Black respondents and 59 percent of Latinx respondents. White respondents reported paying $5.29 in average costs per month, Black respondents reported $12.30, and Latinx respondents reported paying $15.85 in average costs per month. Although the survey does not control for economic differences, such as income, it still demonstrates that bank fees have a more substantial impact on Black and Latinx customers.

Another study of 1,300 community banks revealed it is more expensive for Black and Latinx communities to open and maintain checking accounts. Banks in Black communities require a minimum average opening deposit of $80.60, which is about $20 higher than the average minimum amount required in white neighborhoods. Individuals living in majority-Latinx and -Black neighborhoods are also required to have a higher minimum balance to maintain checking accounts. Plausible explanations for the differences could be that different types of banks select into neighborhoods by race or that individual banks charge more when their branches are in communities of color. Either way, Black and Latinx consumers have a greater portion of their income stuck in checking accounts compared to white consumers. The study also indicates that disparities in who pays the most for banking services are not limited to larger banks but also “Main Street”—or community—banks.

Often, disparities spillover to the adequacy of financial services available to low-income communities and communities of color. For example, banks in communities of color are often starkly understaffed compared to banks in majority-white neighborhoods. Banks in majority-white neighborhoods often have shorter lines. In this section, the literature we reviewed suggests that the presence of banks in low-income communities and communities of color does not necessarily result in access to safe and sound financial services. In the following section, we discuss how overdraft protection programs and associated fees are a continuance of the type of bank practices that disproportionately affect marginalized communities detailed above.
THE ORIGIN OF OVERDRAFT PROTECTION PROGRAMS AND IMPLEMENTATION OF OVERDRAFT FEES

In this section, we detail how overdraft protection programs began as a courtesy program that quickly turned into a lucrative source of revenue for banks. We also detail the various practices that banks use to mislead customers into participating in the program, such as presenting customers with deceptive information, non-sequential transaction processing, and the use of sustained/extended overdraft fees.

A Courtesy Program is Introduced
At first, banks offered overdraft protection programs as courtesy programs that protected customers in case of bounced checks. Any bounced checks could trigger non-sufficient fund (NSF) fees and possibly impede the processing of necessary payments. The rise of ATM cards and increased use of debit cards resulted in a significant increase in accidental account overdraws; for banks, it represented an unexpected and lucrative source of revenue.
Figure 3 shows that since 1991, the increase in the percentage of consumers with debit cards corresponds with an increase in banks’ non-interest fee revenue, including overdrafts. Despite this pattern, in 2005 the Federal Reserve exempted overdraft fees from the finance charges covered under the Truth in Lending Act (TILA) of 1968. They deemed overdraft fees as the result of “occasional and inadvertent overdrafts, rather than routine extension of credits.”31 (The concept of overdraft as a substitute for credit will be explained later on in this section.) As such, a courtesy program that was once applied judiciously became an automatic account feature that included hefty fees and additional sustained/extended fees.32
Banks quickly mobilized to increase the revenue earned by service charges, including overdraft fees. As Figure 4 shows, banks were able to more than double their service charge revenue over the past three decades. Today, the average overdraft fee for each overdraft transaction is $35 and is independent of the total amount of the transaction that overdraws the account. Although in 2010, the Federal Reserve’s “opt-in” requirement, which we discuss later on, caused banks’ non-interest income to decrease, we see that banks continued to earn billions in aggregate non-interest income. In fact, from 2015 to 2017, the top 13 banks with $2 billion in assets had, on average, a total overdraft revenue that was approximately $590 million per bank per year.
Unfortunately, data that depicts the share of overdraft/NSF fee revenue on total non-interest fee revenue was only made publicly available since 2015 and only for banks with assets greater than $1 billion. Since 2015, Table 1 shows that overdraft and NSF fee revenue have remained at approximately five percent of banks’ non-interest income. Even so, the data does not reflect total nationwide fee revenue, as the Federal Deposit Insurance Corporation (FDIC) does not require banks with under $1 billion in assets to breakout their overdraft revenue from other deposit-related fees. There is also limited data that suggests smaller banks collect overdraft and NSF revenue in similar ways as larger banks. Still, we can surmise the importance of overdraft revenue for bank financial operations and how it may influence bank decisions in regards to their overdraft protection programs’ structures.

Banks often describe overdraft protection programs as a service they offer in the customer’s interest and one that customers want in order to avoid the embarrassment, inconvenience, or cost of a rejected transaction. In actuality, a majority of customers prefer having a transaction rejected in lieu of a fee charge. This particular argument is undermined by the same financial management companies that banks hire to manage their checking accounts. For instance, some checking account management programs promise to honor “checks and overdraft fees” so that financial institutions may “increase overall fee revenue.” Other management programs promise to increase overdraft fee income by “100%, 200%, 300%, or more.” Financial management companies directly target smaller “Main Street” banks as well. Smaller banks are often subject to marketing that promises that they, too, can increase their overdraft fee revenue without needing to be a large bank. Clearly, overdraft protection programs are no longer a courtesy designed for the customer’s interest, but instead are yet another way to maximize bank revenue.

<table>
<thead>
<tr>
<th>Year</th>
<th>Overdraft/NSF Revenue Among All Reporting Banks</th>
<th>Overdraft/NSF Revenue as % of Non-Interest Income Among All Reporting Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$11.18 billion</td>
<td>5%</td>
</tr>
<tr>
<td>2016</td>
<td>$11.44 billion</td>
<td>5.10%</td>
</tr>
<tr>
<td>2017</td>
<td>$11.45 billion</td>
<td>5%</td>
</tr>
<tr>
<td>2018</td>
<td>$11.55 billion</td>
<td>4.60%</td>
</tr>
<tr>
<td>2019</td>
<td>$11.68 billion</td>
<td>5%</td>
</tr>
</tbody>
</table>

As we will discuss later, many people now use overdraft protection programs as a substitute for more traditional short-term lines of credit. Even so, the Federal Reserve maintains that overdraft not be regulated as credit and instead opts to regulate them under the Truth in Savings Act.42

Amended Regulation E: Automatic Enrollment Halts and Opt-In Begins
The little federal oversight available on overdraft protection programs combined with a clear incentive to continue the practice allowed banks to freely enroll customers automatically into these programs. However, in 2010, the Federal Reserve Board of Governors modified its regulations to require financial institutions to acquire customers’ consent to “opt-in” before charging overdraft fees on ATM and non-recurring debit card purchases.43 The modification is now known as the Amended Regulation E of 1978’s Electronic Fund Transfers Act. As Figure 3 suggests, the increasing trend of aggregate bank non-interest income was interrupted by Regulation E implementation. We observe a substantial decrease in aggregate non-interest income between 2009 and 2010. Since 2015, regulators also require banks with greater than $1 billion in assets to report their nationwide aggregate revenue from NSF and overdraft fees in quarterly Call Reports.44 Despite increased regulation, however, banks continue to earn lucrative revenue from overdraft fees.45 Banks often manage to maximize revenues by also using deceptive language and practices to trick customers into “opting-in” to overdraft protection programs.

The Use of Misleading or Deceptive Information to Achieve High Enrollment Rates
Over the years, the marketing of overdraft protection programs has been a concern for federal regulators and legal courts. On several occasions, banks have been found guilty of enrolling customers in overdraft protection programs by using misleading or deceptive information. The result is particularly important as a CFPB study showed that frequent overdrafters that opted-in to overdraft protection programs paid 260 percent more in overdraft fees than frequent overdrafters not opted-in to overdraft protection programs.46 Many customers report opting-in to overdraft protection programs as a direct result of misleading marketing.47 In 2016, the CFPB ordered Santander Bank to pay $10 million in fines because it “deceptively marketed the overdraft service.”48 Santander Bank telemarketers falsely led consumers to believe the overdraft protection program was free, that customers would not be charged a fee if they brought their account current within five business days of overdrawing their account with a debit card and ATM transaction, and implying to consumers that fees would be charged only for emergency transactions. Additionally, in 2017, the CFPB also sued TCF National Bank because the CFPB characterized TCF’s overdraft protection program as an “obscure process” and as mandatory for new customers looking to open a new account.49 The case was settled, and TCF National Bank agreed to pay $25 million in restitution to customers affected by overdraft fees. Despite the high cost of using misleading marketing to describe overdraft protection programs, it remains a prevalent practice among banks.

For example, a study of the largest banks in four states (measured by deposit size) showed a consistent pattern of bank employees describing overdraft protection programs with misleading and inconsistent language.50 Bank employees successfully managed to portray overdraft protection programs as an automatic account feature by asking customers if they would like to “opt-out” of this account feature. Employees often participate in such practices because they are promised financial bonuses or must meet high opt-in quotas for new checking accounts at the condition of continued employment.51
These practices also tend to be more prevalent in predominantly non-white neighborhoods. For example, that same study found that bank representatives in predominantly non-white neighborhoods often characterized overdraft protection programs in a more positive light than in branches located in predominantly white neighborhoods. Banks also use written material, such as pamphlets or descriptions on their websites, to disseminate misleading or deceptive information. For instance, a Connecticut credit union dubs their overdraft protection program as “Courtesy Pay.” It assures prospective customers that their program “will save you the potential embarrassment of overdrawning or getting declined with your debit card while saving you fees. Courtesy Pay can save you money and hassle because it covers transactions that would otherwise be rejected (emphasis added).” The credit union fails to mention that without overdraft protection, debit card transactions would simply be declined with no cost to the customer and is also unclear in regards to how the program will help the customer save money.

Banks are also able to achieve high enrollment rates by misleading customers of the real costs and features of the overdraft protection programs they offer. Customers who opt-in to overdraft protection programs often lack an understanding of the program features and their options. A majority of customers that participate in overdraft protection programs either misunderstand their options or receive misleading information by their bank. A 2017 Pew survey found that 70 percent of people that overdraw their accounts on debit card transactions do not understand that they can have those transactions declined without incurring a fee.

Another way in which banks maximize revenues with overdraft fees is through non-sequential transaction processing. Non-sequential transaction processing is when a bank orders account transactions by size rather than the transaction’s timing. As a simplified example, let us say you have $100 in your checking account and you make four transactions of $20 each. You believe that the remaining amount in your checking account is $20. However, you now have to make a last-minute grocery purchase of $50. You purchase the groceries with the assumption that you will overdraw your account by $30 and incur an overdraft fee of $35. This assumption would be factual if the bank processed your transactions by the order made. However, your bank may—like many others—process your transactions by the largest to the smallest amount. As such, your balance will first decrease by $50 and then, by the four $20 transactions. As a result, your balance is now at -$30, and you have overdrawn your account twice. The bank is now free to charge you a fee for the two transactions, and you now owe $70 in overdraft fees. Although banks often organize transactions in batches, and not individual transactions, the example demonstrates how transaction processing can be structured to result in higher-than-anticipated overdraft fees.

The Federal Deposit Insurance Corporation (FDIC), a federal regulatory body, calls for transactions to be processed in a neutral order and in a manner that “avoids manipulating or structuring processing order to maximize customer overdraft and related fees.” However, a survey of the top 50 banks shows that more than 40 percent of banks report processing transactions from largest to smallest dollar amount. With no pertinent regulations in place, banks are free to collect hefty fees. However, the practice has caused legal troubles for banks on several occasions. For instance, in 2001, a federal court ruled against Wells Fargo regarding its practice of ordering transactions from largest to smallest dollar amount for debit card transactions because, under California’s Unfair Competition Law, it constituted an “unfair” and “fraudulent” practice. This practice remains so profitable because it can work in conjunction with sustained/extended overdraft fees. It is also worth noting that smaller banks are not subject to the scrutinizing supervision of larger banks and so, we speculate if this influences how smaller banks implement overdraft protection programs.
An Explanation of Sustained/Extended Overdraft Fees and Its Implications

A third way in which banks maximize revenues is through sustained or extended overdraft fees. A bank can charge a sustained or extended overdraft fee when an account remains overdrawn beyond a specified amount of time. This results in a secondary fee added to the original overdraft fee charged. A study by the Center for Responsible Lending found that five in ten banks charge sustained or extended overdraft fees. The fees can accumulate to much more than a one-time $35 fee. A study by the Center for Responsible Lending branded sustained/extended overdraft fees as “abusive” and noted that two out of the ten banks that charged sustained/extended overdraft fees were involved in litigation related to them. The two banks, T.D. Bank and Bank of America, no longer charge sustained/extended overdraft fees. For customers, it means that they can end up owing the bank hundreds of dollars’ worth of fees for a single overdraft, much like the Connecticut resident in our introduction. A Pew survey shows that one in four heavy overdrafters pay the equivalent of one or more weeks of wages in overdraft fees per year. Amongst those most impacted by compiled overdraft fees are Black customers. In the end, customers pay exorbitant fees due to not having enough money in their account in the first place. This practice penalizes customers for lack of money and imposes a hefty private tax disproportionate to the offense. It can push customers into a cycle of debt or increase the likelihood that they will overdraft their account again.

Overdraft Protection Programs Overly Affect Marginalized Communities

National statistics show that overdraft fees are not a burden shared equally. The following data demonstrates the disparities in who incurs overdraft fees:

- People who incur large numbers of overdraft fees are more often low-income, single, and non-white.
- Only 18 percent of account holders incur 91 percent of overdraft and NSF fees.
- People who rent their homes are more likely to incur more than $100 per year in overdraft and NSF fees.

We also find that an overdraft fee’s real cost is often more than $35, primarily when some customers use overdraft protection programs as a line-of-credit. A survey by Pew found that 32 percent of respondents reported using overdraft to borrow money when they are short on cash. The program acts as an informal line-of-credit that does not assess the customer’s ability to repay and charges exorbitant rates. For instance, an account overdraft of $20 will incur a $35 fee, equivalent to a short-term loan with a 9,125 annual percentage rate (APR). As a result, customers may not be able to repay the overdraft immediately. Thus, they may incur sustained/extended overdraft fees or borrow money from more precarious sources (e.g., payday lenders), and inadvertently become trapped in a cycle of debt. Additionally, customers may be pushed out of the banking system altogether. Currently, around one million adults no longer have a banking account, primarily as a result of high or unpredictable banking fees. The CFPB also shows that the number of involuntary account closures triples for customers who opted-in to overdraft protection programs as opposed to those that did not. Notably, involuntary account closures due to overdraft fees are significantly higher in counties with a large number of Black residents.

In essence, overdraft protection programs have evolved to perform the same function that several other bank practices have done in the past decades: maximize revenue at the expense of the economic security of low-income communities and communities of color. In the following section, we explore the legal parameters in which states can push back against these practices.
STATE EFFORTS AND LEGAL LIMITATION

As detailed in the previous section, federal regulation for overdraft protection programs and fees are limited to the requirement that banks must obtain a customer’s consent before enrolling them in the program. As such, we turn to analyze the role of states in regulating overdraft protection programs and fees at national- and state-chartered banks. This section is divided into five parts. First, we provide a brief explanation of the United States’ dual banking system. Second, we explain the difference between national- and state-chartered banks. Third, we discuss states’ legal limitations in regulating overdraft protection programs and fees at national- and state-chartered banks. Fourth, we review past and current state strategies aimed to curb and control the use of overdraft protection programs and fees. Finally, we narrow down and discuss Connecticut’s past and current efforts to rein in overdraft protection programs and its legal limitations.

An Explanation of the Dual-Banking System and Regulations

The dual-banking system that exists in the United States is a system of banking in which national- and state-chartered banks can be regulated and supervised at different levels according to their charter. A report by the Congressional Research Service—a public policy research institute of the United States Congress—explains the origins of the dual banking system and how national- and state-chartered banks choose their charter:

[The dual banking] system has its origins in the National Currency Act of 1863 and the [National Bank Act], enacted one year later. Since that time, banks have had the option of applying for a national charter from the [Office of the Comptroller of Currency] or a state charter from a state’s primary banking regulator. Existing banks may also convert from a state charter to a national charter and vice versa. The considerations that lead a bank to choose a national or state charter are varied and have changed over time as the regulatory landscape has shifted. A bank may select a national charter in order to benefit from federal preemption of certain unfavorable state regulations, to secure the greater simplicity of uniform national regulation when it operates in multiple states, or because of aggressive legal actions taken by certain state regulators. In contrast, a bank may select a state charter to avoid the generally higher supervisory fees charged by the OCC or because it perceives federal regulation as being more onerous than state regulation. A bank’s “choice of chartering authority is also a choice of primary regulator,” as the OCC serves as the primary regulator of national banks, and state banking authorities serve as the primary regulators for state-chartered banks.
The inherent complexity of the dual-banking system further complicates the regulation of national- and state-chartered banks at different levels. In this next part, we explore how the dual-banking system limits how states can regulate overdraft protection programs in national- and state-chartered banks. We will also discuss practices and issues prevalent in both national- and state-chartered banks, independent of the size of banks.

**National- and State-Chartered Banks**

The dual banking system sets state and federal banking systems to co-exist parallel to each other. National- and state-chartered banks are defined and regulated by their chartering authority, the entity that granted the bank’s charter. Each type of bank also answers to additional regulatory authorities depending on factors such as membership and insurance coverage.

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**Table 2. Regulatory Authorities of National- and State-Chartered Banks**

<table>
<thead>
<tr>
<th>Types of Regulatory Authorities</th>
<th>National-Chartered Bank</th>
<th>State-Chartered Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chartering Authority</td>
<td>Office of Comptroller of the Currency</td>
<td>State Banking Agency</td>
</tr>
<tr>
<td>Membership of Federal Reserve System (FRS)</td>
<td>Mandatory</td>
<td>Can request membership</td>
</tr>
<tr>
<td>FDIC Insurance</td>
<td>Mandatory</td>
<td>If member of FRS, mandatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If not member of FRS, can request insurance</td>
</tr>
</tbody>
</table>

**Table 2** details the regulatory authorities that national- and state-chartered banks are bound by and can elect to join. The federal banking system operates on a national bank charter and hence, is subject primarily to federal regulations and standards. As we see in Table 2, national-chartered banks are subject to the federal authority of the Office of the Comptroller of Currency (OCC), the Federal Reserve, and the FDIC. The state system operates similarly with state counterparts. For example, Connecticut’s Department of Banking is the chartering authority in the state and so acts as the primary regulator for banks that have received their charter from the state. State-chartered banks can also opt to become members of the Federal Reserve System (FRS). They can also choose to be insured by the FDIC. If a state-chartered bank chooses to become an FRS member, FDIC-insured, or both, they also agree to follow FRS regulations, FDIC regulations, or both. Most often, state-chartered banks will choose to be an FRS member and become FDIC-insured because of the benefits and abilities tethered to membership. The complicated regulatory differences between national- and state-chartered banks ultimately dictate states’ ability to regulate overdraft protection programs and fees.
Regulating Overdraft Fees and States’ Legal Limitations

As we have seen, the country’s dual-banking system complicates the regulation of national- and state-chartered banks. In this part of the report, we focus on the legal limitations at the state-level in regulating overdraft protection programs and fees at national- and state-chartered banks.

The rights of banks to implement overdraft protection programs and fees are enumerated in several federal regulations. First, the U.S. code explicitly authorizes national banks to perform “all such incidental powers as shall be necessary to carry on the business of banking.” Second, the OCC asserts that “the establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles.”

Federal regulators have also instituted several regulations concerning overdraft protection programs, all of which preempts state law. Arguably, the most important, as mentioned earlier, is the Regulation E from the Electronic Funds Transfer Act. It implemented the opt-in rule to provide consumers with a choice to explicitly consent to overdraft protection and its associated fees on ATM and nonrecurring point-of-sale debit card transactions. Regulation CC, related to the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21), allows banks to hold deposits past a specified amount of time when an account is repeatedly overdrawn. In some ways, this regulation creates a self-fulfilling prophecy as accounts remain overdrawn because they do not have access to funds being held up because the account is overdrawn. Certain consumer protections also exist in regards to overdraft protection programs such as the Equal Credit Opportunity Act (ECOA) and Regulation B, which prohibits creditors from discriminating against an applicant “on a prohibited basis in any aspect of a credit transaction” including overdraft protection programs. In other words, the ECOA prohibits the targeting of applicants on a prohibited basis for overdraft protection programs while offering other applicants more favorable overdraft services.

Thus, any state regulation that attempts to regulate overdraft fees, whether to loosen or tighten protections, at national-chartered banks will be in direct legal contradiction to federal regulation and will be preempted.

As determined by the U.S. Supreme Court, federal preemption entails that “any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” To put it differently, any state banking law that contradicts laws and regulations at the federal level, including OCC regulations, shall be superseded by the federal law or regulation. A report by the Congressional Research Service summarizes two general ways in which state laws can be preempted:
Federal law can preempt state law expressly where a federal statute or regulation contains explicit preemptive language—that is, where a clause in the relevant federal law explicitly provides that it displaces certain categories of state law. For example, the Employee Retirement Income Security Act of 1974 contains an express preemption clause providing that some of the Act’s provisions “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” described elsewhere in the statute. Federal law can also preempt state law impliedly, “when Congress’ command is . . . implicitly contained in” the relevant federal law’s “structure and purpose.” The Court has identified two subcategories of implied preemption. First, “field preemption” occurs “where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.” Second, “conflict preemption” occurs where “compliance with both federal and state regulations is a physical impossibility,” or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

In addition, Bank of America v. City & County of San Francisco specified that a state’s role in regulating national-chartered banks is limited to a few areas such as debt collection and contracts. Although states may not be able to regulate overdraft protection programs and fees, they can still challenge bank practices they deem abusive or predatory. For example, in a multi-state class action suit, the Court ruled that the state attempts to regulate non-sequential posting transactions and implementation of overdraft fees were preempted. However, it held the states’ argument that the bank in question abused its discretion to delay debiting certain payments in order to charge more overdraft fees.

Similarly, in In re T.D. Bank, N.A., the U.S. District Court of South Carolina upheld a state claim relating to a national-chartered bank that charged overdraft fees on accounts that had not been overdrawn. In both cases, states did not challenge the right of banks to charge overdraft fees but rather, how the fees were charged and their validity. Overall, these court cases reaffirm that states are primarily constricted to a supervisory role for banks and limited as a regulator.

State-chartered banks represent different barriers to state regulation. Although state-chartered banks are within the regulatory purview of the state that granted its charter, they are also subject to their corresponding federal regulator. As a result, the state regulation of overdraft programs in state-chartered banks still presents financial and political challenges. There are two reasons for this occurrence. First, attempts to regulate overdraft protection programs and fees will likely prompt objections of undue burden or unequal treatment compared to national-chartered banks. In response to proposed state bill H.B. 6597 that called to prohibit certain overdraft fees, the Connecticut Bankers Association argued that such legislation would “only impact . . . state community banks” and create “additional regulation burdens, costs, and competitive issues for [state] institutions.” Second, state legislators may not be politically inclined to support the regulation of such a lucrative revenue stream of state-chartered banks. Therefore, any regulation on bank fees is strictly limited to items such as paper checks. For instance, Massachusetts currently limits fees only for bounced checks enacted by state-chartered banks. It limits the fee to an amount that is proportional to the direct cost incurred by the bank for processing the checks. Still, efforts to regulate or curb the use of overdraft protection programs remain a significantly popular issue amongst civil rights groups, consumer protection advocates, and national organizations who are aware of the program’s disproportionate effects on low-income communities and communities of color.
State Strategies

States run into several legal limitations when they attempt to regulate overdraft protection programs at national- and state-chartered banks. As a result, states often resort to “get-around” tactics to offset the financial burden from customers charged overdraft fees. Strategies involve investment in financial alternatives, targeted banning of overdraft fees, and discouraging or outlawing other high-cost financial services. For example, New York Governor Andrew Cuomo has proposed investing in the state’s Community Development Financial Institutions (CDFI) as an answer to vulnerable New Yorkers who “are shut out of a banking system that would enable upward mobility.”93 CDFIs often target clientele that are “economically distressed communities and people on limited incomes.” They also offer lower overdraft fees and lower interest loans compared to larger banks.94 Other states, such as Ohio, opt to ban overdraft fees incrementally. For example, in 2012, Ohio decided to outright eliminate all overdraft fees on ReliaCard, the prepaid debit card program funded and controlled by the state for unemployment compensation.95 In this manner, Ohio was able to target its most economically vulnerable population without having to worry about the legalities and financial or political implications.

In a rare direct move to regulate overdraft fees, the COVID-19 pandemic has prompted the New York State Department of Financial Services to require state-chartered banks to eliminate overdraft fees for customers that can demonstrate financial hardship caused by the COVID-19 pandemic.96 In the conversation of overdraft fees, payday loans are also often discussed. Payday loans are pertinent as “consumers who take out payday loans are more than twice as likely as nonborrowers to overdraw with their debit cards.”97 In other words, people that use payday lending services also tend to be overdrafters. Fortunately, this relationship is not of concern in Connecticut where payday lending is already prohibited de facto of strict state requirements in small loan law and check casher law, as well as usury limits.98

Addressing Overdraft Protection Programs in Connecticut

In this part, we narrow our focus down to Connecticut and discuss the current state of overdraft protection programs and fees. Connecticut’s banking law explicitly allows the use of overdraft fees on the condition that customer authorization is present, and the charge is “in accordance with any agreement between the customers and bank.”99 As we can see, the state law echoes Amended Regulation E and general federal regulations. The use of overdraft fees is singularly prohibited when the overdraft is “due to an error on a direct deposit tape of the Social Security Administration or an accidental omission from such tape.”100 Other than that, the available information shows Connecticut banking law explicitly allows and protects the right of banks to implement overdraft protection programs and fees. Although Connecticut is within its legal right to regulate fees on state-chartered banks, the Connecticut Department of Banking and state legislature maintain that account charges are business decisions of banks that should not be restricted.101

Regardless, Connecticut, like other states, has also seen various attempts to rein in the improper use of overdraft protection programs and fees. In Terrian Walker v. People’s United Bank, N.A., a class-action suit against the national-chartered bank asserts that the bank used non-sequential transaction processing to create an artificial balance.102 This is yet another court case that argued against the manipulation of transactions to increase overdraft revenue at the benefit of the bank. Although the People’s United Bank maintains that “its practice was proper and was disclosed to its customers,” it has agreed to settle and pay $6,500,000 in restitution to affected customers. The case settlement is currently awaiting court approval.103
Attempts to regulate overdraft protection programs and fees extend beyond the state’s judicial system and into the legislative arena. The multiple attempts to curb overdraft fees in the state reflect how it remains a pertinent and pressing issue for the residents of Connecticut. Since 2009, two bills concerning overdraft fees have been introduced in the state legislature but stalled. The first was a bill to limit banks to charging only one overdraft fee per day. Another called for prohibiting overdraft fees when an overdrawn account receives a deposit on the same day the overdraft occurred. Although neither bill called for the outright ban of overdraft fees and, instead, proposed incremental protections, they were a step in the right direction. Unfortunately, testimonies for the bills presented political and financial objections to the proposals, and, as such, neither bill gained much traction and failed to pass.

The issue of overdraft protection programs and fees in Connecticut is especially concerning when viewed through the lens of transparency. There is limited information at the state level on how much Connecticut banks (national- and state-chartered) earn on overdraft fees. Previous inquiries by the Department of Consumer Protection on the cost of processing overdrafts in the state for Connecticut’s five largest banks largely have gone ignored. The national data we have analyzed illustrates the pervasive problem of overdraft fees in the lives of low-income communities and communities of color. However, the lack of transparency and data at the state-level leaves us without an accurate understanding of the barriers that overdraft protection programs and fees may present to Connecticut’s most vulnerable residents.

The state’s limited information on overdraft fee revenue stems from two reasons. First, the OCC holds exclusive visitorial power over national-chartered banks. In other words, states do not possess the ability to conduct examinations or require the “production of books or records of national banks…except in limited circumstances authorized by federal law.” Secondly, an outdated legally-mandated annual report by the Federal Reserve provides the only publicly available information on overdraft fees charged by Connecticut banks. As part of the annual report, federal statutes used to require that the Federal Reserve disclose “correlations, if any, between changes in the cost of the availability of retail banking services and increases in deposit insurance premiums.” The last available data, from 2002, shows that Connecticut banks charged, on average, $22.09 for NSF checks and $23.08 for overdrafts. With the current national average for overdraft fees at $35, we reasonably assume that Connecticut-specific data is out-of-date and may not accurately reflect the current status of overdraft protection programs and fees. The lack of data hinders the state’s ability to accurately assess what financial barriers exist for Connecticut residents that attempt to participate in the banking system.
RECOMMENDATIONS

In this report, we have detailed the rise of overdraft protection programs and fees as one of banks’ primary non-interest revenue streams at the expense of marginalized communities—specifically, low-income communities and communities of color. Overdraft protection programs and fees have flourished as a by-product of a financial and economic system whose historic exclusion of marginalized communities allows services that disproportionately negatively affect marginalized communities to thrive. The design of a financial and economic system that, historically, excludes marginalized communities also yields harmful by-products, such as overdraft protection programs, to thrive. These programs disproportionately burden communities through dubious tactics such as conveying misleading or incorrect information, non-sequential transaction processing, and sustained/extended overdraft fees. Additionally, we detailed states’ legal limitations in attempts to curb or regulate the use of overdraft fees by national- and state-chartered banks. Most importantly, we have concluded that states only have visitorial powers over state-chartered banks.

The financial burden imposed by overdraft protection programs and fees cannot be understated. For this reason, it is imperative to address the financial barriers that low-income communities and communities of color in Connecticut face because of overdraft protection programs and fees.

To that end, Connecticut Voices for Children proposes that Connecticut collect the following data to increase transparency and raise awareness of overdraft protection programs and fees at the state level, per state visitorial powers:

1. **We recommend that Connecticut formally request data from state-chartered banks that show the total amount of overdraft fees collected yearly.**

   Currently, Connecticut’s banking law requires that state-chartered banks retain overdraft reports for only two months. In order to protect Connecticut’s most economically vulnerable, we recommend that the state track more closely the usage of overdraft fees by state-chartered banks. The total amount of overdraft collected yearly will inform the state of essential patterns, such as if banks are charging overdraft fees in line with national trends, which can ensure Connecticut residents are not paying an unfair amount of overdraft fees.

2. **We recommend that Connecticut formally request data from state-chartered banks that show the median amount of overdraft fee charged per bank.**

3. **We recommend that Connecticut formally request data from state-chartered banks that show the range of total overdraft fees charged per account.**

   National trends point to the average amount of overdraft fees at $35. However, a CFPB white report study admitted that “mean overdraft fees paid by accountholders…varied by over $201” demonstrating how fees can quickly pile on. If the state collects the average amount of overdraft fee charged, it can improve transparency and ensure banks charge overdraft fees in a non-discriminatory and judicious manner. The state can also be aware of any stark variations in customer experiences and outcomes.
4. **We recommend that Connecticut formally request data from state-chartered banks that show the total cost of processing overdraft transactions.**

As we have seen, overdraft fees are often disproportionately greater than the cost that banks incur for processing overdrafts. If the state collects the total cost of processing overdraft transactions from banks, it can ensure that any rise in overdraft fees are justified, proportional, and not only used to maximize banks’ revenue.

5. **We recommend that Connecticut formally request data from state-chartered banks that show the bank’s posting order policies.**

As mentioned before, FDIC discourages banking institutions from ordering transactions to clear from highest to smallest dollar amounts and instead, encourages a neutral approach where the types of transactions are cleared by one of the following: order received, check number, serial number sequence, or other potentially equitable approaches.113

6. **We recommend that Connecticut formally request data from state-chartered banks that shows what percentage of their total consumer checking accounts are charged overdraft fees during the year.**

Research shows that overdraft protection programs and their fees present a burden primarily to economically vulnerable customers. Banks often earn the majority of their overdraft fee revenue from a small percentage of accounts. A more detailed understanding of how overdraft fees are spread out will stem from data collected by the state on the percentage of accounts charged overdraft fees.

7. **We recommend that Connecticut formally request data from state-chartered banks that show the opt-in rate of checking accountholders that overdrafted on ATM and non-recurring debit card transactions in the past year.**

A CFPB paper showed that the opted-in accounts were three times as likely to overdraw their accounts more than ten times per year as accounts that did not opt-in to overdraft protection. Data also shows that “opted-in accounts have seven times as many overdrafts that result in fees as accounts that are not opted in.”114

8. **We recommend that Connecticut formally request data from state-chartered banks that discloses the extent of training given to employees on the institution’s overdraft and non-sufficient funds (NSF) policies, procedures, and products.**
9. We recommend that Connecticut formally request data from state-chartered banks that discloses any personnel incentives tied to opt-in rates.

10. We recommend that Connecticut formally request data from state-chartered banks that determines the dollar volume of consumer debit card transactions processed by the institution during the year.

11. We recommend that Connecticut formally request data from state-chartered banks that show the number of consumer checking accounts with overdraft fees charged categorized by zip code to which consumer account statements are mailed.

Often, state-chartered banks do not have information such as race/ethnicity or yearly income of the checking account holder. As such, the zip code can serve as a reliable proxy of communities of color and low-income communities. In a similar way, the dollar volume of consumer debit card transactions can serve as a proxy of income as lower-income individuals tend to use debit cards more often whereas credit-card usage increases with income.

12. We recommend that Connecticut formally request data from state-chartered banks that determines banks’ use of deposit holds due to perceived account risk under Regulation CC.

Lastly, we urge Connecticut to follow New York’s example and require state-chartered banks to stop charging overdraft fees for the remainder of the pandemic. New York’s current COVID-19 relief includes financial relief in the form of waived overdraft fees charged by state-chartered banks to any who demonstrates financial hardship as a result of the COVID-19 pandemic. However, many individuals under financial distress could be unable to provide the proof required by New York. As such, we recommend Connecticut require state-chartered banks to stop charging overdraft fees for every customer until the remainder of the pandemic.

In this report, we have demonstrated that overdraft protection programs and their fees disproportionately burden low-income communities and communities of color. Overdraft fees are also a driving factor leading many to become unbanked. In Connecticut, 5.5 percent of households are unbanked—which makes the state have one of the highest percentages of unbanked households in New England, second only to Rhode Island.115 If the state collects the demographic break-up of accountholders charged overdraft fees, the state can track the impact of overdraft fees. This information can help lawmakers take preventive measures to reduce the disproportionate burden of overdraft fees on low-income communities and communities of color and to help members of these communities access much needed safe and sound financial services.

We recommend that the Connecticut Department of Banking collect the aforementioned data indicators annually. The state currently has 28 state-chartered banks.116 As FDIC-insured institutions and regulated by the Federal Reserve, state-chartered banks are subject to annual or 18-month examinations.117 Therefore, the Connecticut Department of Banking already has a structure in place to provide financial reports. This means that our recommendation to include specific data on overdraft programs and its fees would not be an undue, costly burden that would put them at a disadvantage to national-chartered banks.
CONCLUSION

The COVID-19 pandemic highlights how fundamental access to safe and sound financial practices is to ensuring the economic security of both individual families and the state. In a few months, the pandemic has managed to exacerbate the worst inequalities in the nation at such an astounding level that the recovery will likely take years. Unfortunately, the most vulnerable communities have pressing issues that must be addressed in the most urgent manner possible. In order to mitigate the long-term economic consequences, we must look at any existing tools and systems that unnecessarily and disproportionately harm marginalized communities and hinder their ability to reach economic stability.

This report shows how overdraft protection programs that purport to be protection for customers are a surprising barrier to economic security. More importantly, we highlighted how such programs can push low-income communities and communities of color out of the banking system, a traditional imperative to economic security and especially so in a pandemic. We also discussed the legal parameters of states concerning regulations of overdraft protection programs and fees at national- and state-chartered banks.

We recommend that the State of Connecticut begin to collect critical data points that will provide a transparent and comprehensive look at overdraft fees in the state and shed light on the communities affected by it. The fair economic participation of marginalized communities is critical to the health and recovery of Connecticut’s economy. Moreover, marginalized communities have the right to fair economic participation, which the state is obligated to respect. The disproportionate effects of overdraft protection programs on communities of color and low-income communities are of paramount importance to achieve economic security, and one that the state must solve now.
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This report was written under the supervision of Lauren Ruth, Ph.D., Research and Policy Director, and Patrick O’Brien, Ph.D., Research and Policy Fellow for Fiscal & Economics, at Connecticut Voices for Children. If you have questions about this research, contact Dr. Ruth at lruth@ctvoices.org or 203-498-4240 x 112 or Dr. O’Brien at pobrien@ctvoices.org or 203-498-4240 x 114.
ENDNOTES


2. CFPB Complaint No. 2867595


4. This includes the institution of chattel slavery which established Black individuals as property with ‘productive’ value, the 1935 National Labor Relation Act (NLRA) which excluded agricultural and domestic “help” sectors that were comprised overwhelmingly of Black workers, and the property tax system in Connecticut where research shows that in cities, like New Haven, majority-Black and majority-Latino neighborhoods pay higher effective rates than residents of majority-white neighborhoods. For more information, see Baptist, E. E. (2014). The half has never been told: Slavery and the making of American capitalism New York: Basic Books, a member of the Perseus Books Group and Harris, L. (2004); ‘Assessing’ discrimination: The influence of race in residential property tax assessments. Journal of Land use & Environmental Law, Vol. 20, No.1, 1-60. Retrieved from https://www.jstor.org/stable/42843017?seq=1


6. For the purposes of this paper, the term “overdraft protection programs” will encompass services offered by banks for consumers to opt-in and allow debit card and ATM transactions to be processed despite insufficient funds in exchange of a predetermined fee. Sometimes this service is referred to by banks as “overdraft coverage programs” or “bounce protection.”

7. For more information, June CT official unemployment rate is 7.8 (issues with data collection leads the CT Office of Research to believe the rate is closer to 12 to 13 percent) and the Connecticut Data Collaborative approximates Native American and Black populations in CT to be 35.2 percent and 23.5 percent, respectively. Data from Bureau of Labor of Statistics (BLS) reports low-wage sectors such as retail, hospitality, and food services report the highest number of job losses. Data sources are Connecticut Department of Labor. (2020). State of Connecticut vs. United States unemployment rate - State of Connecticut. Retrieved from https://www1.ctdol.state.ct.us/lmi/unemprateCTUS.asp#:--:text=Labor%20Market%20Information%202D%20State%20of,United%20States%20Unemployment%20Rate&text=The%20June%202020%20official%20unemployment%20rate%20is%20down%202.2%20points%20from%20May; Unemployment in Connecticut during the COVID-19 crisis (2020). In Connecticut Data Collaborative. Retrieved from https://www.ctdata.org/covid19-unemployment; Labor force statistics from the Current Population Survey (CPS) (2020). In Bureau of Labor Statistics. Retrieved from https://www.bls.gov/web/empsit/cpsee_e16.htm

Note: National data for Native American unemployment rate not available.

As the share of overdraft/NSF fee revenue in banks’ non-interest revenue, it is possible that banks maintain branches in marginalized communities because of the overdraft revenue the branches generate. There are several different proposed solutions such as modernizing bank fee systems to provide sustainable bank revenue spread evenly across its customer base or returning to the system of postal banking through the United States Postal Office put in place in the early 20th century which provided low-cost financial products. See https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2020/jul/Beyond-Overdraft-Report-Finalpdf.pdf and https://harvardlawreview.org/2014/02/its-time-for-postal-banking/.


One of the most usurious services is payday loans, a short-term and high-interest loan that usually provides borrowers with enough money to last until their next paycheck. For more about payday loans and their relationship to overdraft, see: Bhutta, N., Goldin, J., & Homonoff, T. (2016, February). Consumer borrowing after payday loan bans. Journal of Law and Economics, 59(1), 225-259. doi:https://doi.org/10.1086/686033.

In this report, we use the terms “Latino” and “Latinx” according to the term employed by the source data.


Ibid.


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Connecticut Voices for Children: A New Function of An Old System

24 Ibid.


26 Ibid.


28 Ibid.


30 Ibid.


37 The Overdraft Protection Act of 2009: Hearings before the Committee on Financial Services, House of Representatives, 111th Cong, 105 (2009) (Testimony of Nessa Feddis)


42 70 Fed. Reg. 29582


45 Ibid.


47 Ibid.


52 Ibid.


60 Pew defines heavy overdrafters as those who incur over $100 in overdraft and NSF fees each year.


70 Smith, P., & Borné, R. (2016, May 24). Broken banking: Overdraft penalties harm consumers, discourage...


73 In the financial system, overdraft protection programs are prevalent in national- and state-chartered credit unions. For the purposes of this paper, we will solely be discussing federal and state regulations pertinent to national- and state-chartered banks.


76 Connecticut Department of Banking. https://portal.ct.gov/DOB


80 12 C.F.R §7.40002(B) https://www.law.cornell.edu/cfr/text/12/7.4002


82 An account is considered to be repeatedly overdrawn when it fulfills either of two conditions: (1) The account has had a negative balance on six or more banking days during the preceding six months or (2) The account has had a negative balance of $5,000 or more on two or more banking days during the preceding six months. https://www.federalreserve.gov/pubs/regcc/regcc.htm


86 Bank of America v. City & County of San Francisco, 309 F.3d 551, 559 (9th Cir. 2002).

87 In re Checking Account Overdraft Litigation, 694 F.Supp.2d 1302 (S.D.Fla.2010).
https://www.leagle.com/decision/infdco20151210f27


M.G.L.A. 167D §6. See:  
https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter167D/Section6

https://www.responsiblelending.org/media/consumer-civil-rights-advocates-cfpb-dont-water-down-overdraft-fee-opt-rule


Ibid.


Emergency relief for New Yorkers who can demonstrate financial hardship as a result of COVID-19 (2020, March 7). In New York State Department of Financial Services. Retrieved from  

https://www.pewtrusts.org/-/media/%20assets/2015/02/consumerbanking_overdraftsupplementbrief_v9.pdf


Connecticut Banking Law. Sec. 42a-4-401.  
https://www.cga.ct.gov/current/pub/art_004.htm#sec_42a-4-401

Connecticut Banking Law. Sec. 36a-303.  
https://www.cga.ct.gov/current/pub/chap_665a.htm#sec_36a-303


People’s United Bank Overdraft Settlement Website.  
http://peoplesunitedbankoverdraftsettlement.com/

An Act Concerning Overdraft Fees. H.B. No. 6092  

An Act Prohibiting Certain Overdraft Fees. H.B. No. 6597  

107 The statute that establishes the OCC’s exclusive visitorial authority states exceptions to the general rule and exceptions authorized by federal law which is how other supervisory authorities, such as the CFPB and FDIC, are federally allowed to supervise banks according to size.

108 12 C.F.R. § 7.4000 https://www.law.cornell.edu/cfr/text/12/7.4000


110 Section 108 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 set a sunset period of seven years to that specific part of the federal statute.


