

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

PENNY LEWIS, on behalf of herself and all others similarly situated,

Plaintiff,

v.

PENDLETON COMMUNITY BANK, INC

Defendant.

Case No. 2:22-cv-12 (Kleeh)

CLASS ACTION COMPLAINT

JURY DEMAND

8/5/2022

CLASS ACTION COMPLAINT

Plaintiff Penny Lewis, on behalf of herself and all persons similarly situated, alleges the following based on personal knowledge as to allegations regarding herself and on information and belief as to others:

INTRODUCTION

1. Plaintiff brings this action on behalf of themselves and classes of similarly situated individuals against Defendant Pendleton Community Bank, Inc. (“Defendant”) over the improper assessment and collection of (a) \$35 OD Fees on debit card transactions authorized on sufficient funds, and (b) multiple \$35 fees on an item.

2. Besides being deceptive, this practice breaches Defendant’s standardized adhesion Contract, attached as Ex. A hereto (collectively the “Contract”).

3. The practice also breaches Defendant’s duty of good faith and fair dealing, and unjustly enriches Defendant to the detriment of its customers.

4. Through the imposition of these fees, Defendant has made substantial revenue to the tune of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

Plaintiff, like thousands of others, has fallen victim to Defendant's fee revenue maximization schemes.

PARTIES

5. Plaintiff is a citizen of Kentucky and has maintained a checking account with Defendant at all times relevant hereto.

6. Defendant is a bank with nearly \$650 million in assets and its principal place of business in Franklin, West Virginia, which is in this District. It has 13 locations in West Virginia, including in this District, and Virginia.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a class action in which at least one member of the class (including Plaintiff) is a citizen of a State different from the Defendant. The number of members of the proposed Class in aggregate exceeds 100 accountholders. 28 U.S.C. § 1332(d)(5)(B).

8. This Court has personal jurisdiction over the Defendant because it resides in, regularly conducts and/or solicits business in, engages in other persistent courses of conduct in, and/or derives substantial revenue from products and/or services provided to persons in this District and in West Virginia.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (c)(2) because Defendant resides in, regularly conducts and/or solicits business in, engages in other persistent courses of conduct in, and/or derives substantial revenue from products and/or services provided to persons in this District and West Virginia.

BACKGROUND FACTS

10. Overdraft fees and insufficient funds fees (“NSF fees”) are among the primary fee generators for banks. According to a banking industry market research company, Moebs Services, in 2018 alone, banks generated an estimated \$34.5 billion from overdraft fees. *Overdraft Revenue Inches Up in 2018*, <https://bit.ly/3cbHNKV>.

11. Unfortunately, the customers who are assessed these fees are the most vulnerable customers. Younger, lower-income, and non-white account holders are among those who were more likely to be assessed overdraft fees. *Overdrawn: Consumer Experiences with Overdraft*, Pew Charitable Trusts 8 (June 2014), <https://bit.ly/3ksKD0I>.

12. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo, Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. See Hugh Son, *Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

13. In line with this industry trend, the New York Attorney General recently asked other industry leading banks to end the assessment of all OD Fees by the summer of 2022. *NY Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6, 2022).

14. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

I. DEFENDANT ASSESSES OVERDRAFT FEES ON DEBIT CARD TRANSACTIONS THAT WERE AUTHORIZED ON SUFFICIENT FUNDS

A. The Contract

15. At all times material hereto, Plaintiff had a checking account governed by the Contract.

16. The Contract is a standardized form contracts for deposit accounts, the material terms of which are drafted by Defendant, amended by Defendant from time to time at its convenience and complete discretion, and imposed by Defendant on all of its deposit account customers.

B. Overview of the Claim

17. Plaintiff brings this action challenging Defendant's practice of charging OD Fees on what are referred to in this Complaint as "Authorize Positive, Settle Negative Transactions," or "APSN Transactions."

18. Here's how the practice works. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Defendant immediately reduces consumers' checking accounts for the amount of the purchase, sets aside funds in the checking account to cover that transaction, and adjusts the consumer's displayed "available balance" to reflect that subtracted amount. As a result, customers' accounts will always have sufficient funds available to cover these transactions because Defendant has already held the funds for payment.

19. However, Defendant still assesses crippling \$35 OD Fees on many of these transactions and misrepresents its practices in the Contract.

20. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Defendant later assesses OD Fees on those same

transactions when they settle days later into a negative balance. These types of transactions are APSN Transactions.

21. Defendant maintains a running account balance, tracking funds consumers have for immediate use. This running account balance is adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Defendant holds the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the account holder and are specifically reserved for a given debit card transaction.

22. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a "debit hold." During the time the debit hold remains in place, which may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498 (Jan. 29, 2009).

23. That means when any subsequent, intervening transactions are initiated on a checking account, they are compared against an account balance that has already been reduced to account for pending debit card transactions. Therefore, many subsequent transactions incur OD Fees due to the unavailability of the funds held for earlier debit card transactions.

24. Still, despite always reserving sufficient available funds to cover the transactions and keeping the held funds off-limits for other transactions, Defendant improperly charges OD Fees on APSN Transactions.

25. The Consumer Financial Protection Bureau (“CFPB”) has expressed concern with this very issue, flatly calling the practice “unfair” and/or “deceptive” when:

[A] financial institution authorized an electronic transaction, which reduced a customer’s available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer’s available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer’s available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer’s decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, “Supervisory Highlights” (Winter 2015).

26. There is no justification for these practices, other than to maximize Defendant’s OD Fee revenue. APSN Transactions only exist because intervening transactions supposedly reduce an account balance. But Defendant is free to protect its interests and either reject those intervening

transactions or charge OD Fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year.

27. But Defendant was not content with these millions in OD Fees. Instead, it sought millions more in OD Fees on APSN Transactions.

28. Besides being deceptive, these practices breach contract promises made in Defendant's adhesion contracts, which fundamentally misconstrue and mislead consumers about the true nature of Defendant's processes and practices. Defendant also exploits its contractual discretion by implementing these practices to gouge its customers.

A. Mechanics of a Debit Card Transaction

29. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Defendant. When a customer physically or virtually "swipes" their debit card, the credit card terminal connects, via an intermediary, to Defendant, which verifies that the customer's account is valid and that sufficient available funds exist to cover the transaction amount.

30. At this step, if the transaction is approved, Defendant immediately decrements the funds in a consumer's account and holds funds in the amount of the transaction but does not yet transfer the funds to the merchant.

31. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.

32. Defendant (like all banks and credit unions) decides whether to "pay" debit card transactions at authorization. For debit card transactions, that moment of decision can only occur at the point of sale, when the transaction is authorized or declined. It is at that point—and only that point—that Defendant may choose to either pay the transaction or to decline it. When the time

comes to actually transfer funds for the transaction to the merchant, it is too late for the bank to deny payment—the bank has no discretion and must pay the charge. This “must pay” rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it “must pay” it when the merchant later makes a demand, regardless of other account activity. See *Electronic Fund Transfers*, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

33. There is no change—no impact whatsoever—to the available funds in an account when the transfer step occurs.

B. Defendant’s Contract

34. Plaintiff has a Defendant checking account, which is currently governed by the Contract. Ex. A.

35. Defendant promises in the Contract that “[i]f a check, item or transaction (other than an ATM or everyday debit card transaction) is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item for insufficient funds (NSF).” Ex. A at 25.

36. In breach of this promise, Defendant assesses \$35 OD Fees on debit card transactions even when it “is presented [with] sufficient funds in [the] account to pay it.”

37. For APSN Transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there is always enough money to “pay” the transaction—yet Defendant assesses OD Fees on them anyway.

38. The above promises indicate that transactions are only overdraft transactions when there is not enough money to cover the transaction at the time the customer swipes his or her debit card to pay for an item. Of course, that is not true for APSN Transactions.

39. In fact, Defendant actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to post those same transactions. Instead, it uses a secret posting process described below.

40. All of the above representations and contractual promises are untrue. Defendant charges fees even when sufficient funds exist to cover transactions that are authorized into a positive balance. No express language in any document states that Defendant may impose fees on any APSN Transactions.

41. First, and most fundamentally, Defendant charges OD Fees on debit card transactions for which there are sufficient funds available to cover throughout their lifecycle.

42. Defendant's practice of charging OD Fees even when sufficient available funds exist to cover a transaction violates its contractual promise not to do so. This discrepancy between Defendant's actual practice and the Contract causes consumers like Plaintiff to incur more OD Fees than they should.

43. Next, sufficient funds for APSN Transactions are actually debited from the account immediately, consistent with standard industry practice.

44. Because these withdrawals take place upon initiation, the funds cannot be re-debited later. But that is what Defendant does when it re-debits the account during a secret batch posting process.

45. Defendant's actual practice is to assay the same debit card transaction twice to determine if it overdraws an account—both at the time a transaction of authorization and later at the time of settlement.

46. At the time of settlement, however, an available balance does not change at all for these transactions previously authorized into positive funds. As such, Defendant cannot then

charge an OD Fee on that transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

47. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Defendant releases the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debits the same transaction a second time.

48. This secret step allows Defendant to charge OD Fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which Defendant specifically set aside money to pay.

49. In sum, there is a huge gap between Defendant's practices as described in the Contract and Defendant's actual practices.

50. Banks and credit unions like Defendant that employ this abusive practice require their accountholders to expressly agree to it—something Defendant here never did.

51. Indeed, recognizing the complexity of the settlement process for APSN Transactions and the fact that a fee in such circumstances is counterintuitive to accountholders, other banks and credit unions require their accountholders to agree to be assessed OD Fees on APSN Transactions.

52. For example, Canvas Credit Union states:

Available balance **at the time transactions are posted (not when they are authorized)** may be used to determine when your account is overdrawn. The following example illustrates how this works:

Assume your actual and available balance are both \$100, and you swipe your debit card at a restaurant for \$60. As a result, your available balance will be reduced by \$60 so your available balance is only \$40. Your actual balance is still \$100. Before the restaurants charge is sent to us for posting, a check that you wrote for \$50 clears. Because you have only \$40 available. . . your account will be overdrawn by \$10, even though your actual balance was \$100 before the check posted. . . Also, when

the \$60 restaurant charge is presented to the Canvas and posted to your account, you will not have enough money in your available balance because of the intervening check, and you will be charged a fee for that transaction as well, even though your available balance was positive when it was authorized.

Member Service Agreement, Part 2, Canvas Credit Union 30 (Nov. 5, 2019), <https://bit.ly/3kX0iXo> (emphasis in original).

53. Defendant and its accountholders make no such agreement.

C. Reasonable Consumers Understand Debit Card Transactions Are Debited Immediately

54. Defendant's assessment of OD Fees on transactions that have not overdrawn an account is inconsistent with immediate withdrawal of funds for debit card transactions. This is because if funds are immediately debited, they cannot be depleted by intervening, subsequent transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited.

55. Defendant was and is aware that this is precisely how its accountholders reasonably understand debit card transactions work.

56. Defendant knows that consumers prefer debit cards for these very reasons. Consumer research shows that consumers prefer debit cards as budgeting devices because they don't allow debt like credit cards as the money comes directly out of the checking account.

57. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of 'float' time that a check usually takes to clear." *What Do I Need To Know About Using A Debit Card?*, ConsumerAction (Jan. 14, 2019), <https://bit.ly/3v5YL62>.

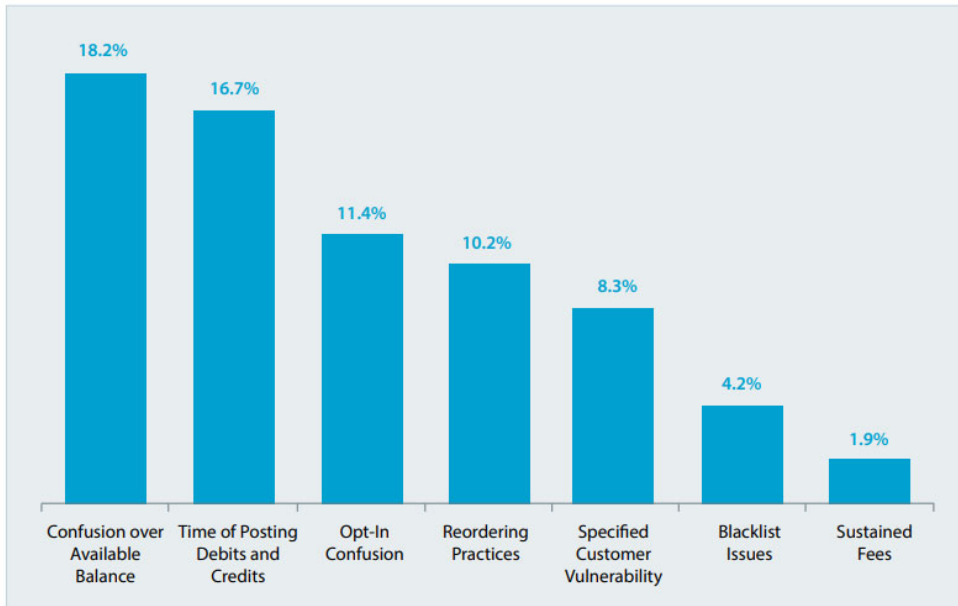
58. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have viewed debit cards (along with credit cards) “as a more convenient option than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), <https://on.mktw.net/3kV2zCH>.

59. Not only have consumers increasingly substituted debit cards for cash, but they believe that a debit card purchase is the functional equivalent to a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

60. Accordingly, “[o]ne of the most salient themes [in complaints to the CFPB] . . . is the difficulty avoiding overdrafts even when consumers believed they would. Often, this was related to bank practices that make it difficult for consumers to know balance availability, transaction timing, or whether or not overdraft transactions would be paid or declined.” Rebecca Borne et al., *Broken Banking: How OD Fees Harm Consumers and Discourage Responsible Bank Products*, Center for Responsible Lending 8 (May 2016), <https://bit.ly/3v7SvL1>.

61. In fact, consumers’ leading complaints involved extensive confusion over the available balance and the time of posting debits and credits:

Figure 3: Top Overdraft Consumer Complaint Issues, by Percentage of Total Complaints



Id.

62. Consumers are particularly confused by financial institutions’ fee practices when “based on their actual review of their available balance, often including any ‘pending’ transactions, [customers] believed funds were available for transactions they made, but they later learned the transactions had triggered overdraft fees.” *Id.* at 9.

63. Ultimately, unclear and misleading fee representations like those in Defendant’s account documents mean that consumers like Plaintiff “who are carefully trying to avoid overdraft, and often believe they will avoid it . . . end up being hit by fees nonetheless.” *Id.*

64. The Federal Deposit Insurance Corporation (“FDIC”) has specifically noted that financial institutions may effectively mitigate this wide-spread confusion regarding overdraft practices by “ensuring that any transaction authorized against a positive available balance does not

incur an overdraft fee, even if the transaction later settles against a negative available balance.”
Consumer Compliance Supervisory Highlights, FDIC 3 (June 2019), <https://bit.ly/3t2ybsY>.

65. Despite this recommendation, Defendant continues to assess OD Fees on transactions that are authorized on sufficient funds.

66. Defendant was aware of the consumer perception that debit card transactions reduce an account balance at a specified time—namely, the time and order the transactions are actually initiated—and the Contract only supports this perception.

67. Defendant was also aware of consumers’ confusion regarding OD Fees but nevertheless failed to make its members agree to these practices.

D. Plaintiff Was Assessed OD Fees on Debit Card Transactions Previously Authorized on Sufficient Funds

68. On or around January 19, 2018, October 12, 2018, March 19, 2020, June 10, 2021, July 26, 2021 and February 22, 2022, Plaintiff was assessed \$35 OD Fees on debit card transactions that had been previously authorized on sufficient funds.

69. Because Defendant had previously held the funds to cover or “pay” these transactions, Plaintiff’s account always had sufficient funds to cover or “pay” these transactions and should not have been assessed these fees.

II. DEFENDANT ASSESSES TWO OR MORE FEES ON THE SAME ITEM RETURNED FOR INSUFFICIENT FUNDS

70. Defendant unlawfully maximizes its already profitable fees through the deceptive and contractually-prohibited practice of charging multiple NSF fees, or an NSF fee followed by an overdraft fee, on an item.

71. Unbeknownst to consumers, when Defendant reprocesses an electronic payment item, ACH item, or check for payment after it was initially rejected for insufficient funds,

Defendant chooses to treat it as a new and unique item that is subject to yet another fee. But Defendant's contract never states that this counterintuitive and deceptive result could be possible and, in fact, promises the opposite.

72. The Federal Deposit Insurance Corporation (the "FDIC") has expressed concern with the practice of assessing multiple fees on an item. In 2012, the FDIC determined that one bank's assessment of more than one NSF Fee on the same item was a "deceptive and unfair act." *In the Matter of Higher One, Inc., Consent Order*, Consent Order, FDIC-1 1-700b, FDIC-1 1-704k, 2012 WL 7186313.

73. In its latest issue of Consumer Compliance Supervisory Highlights, the FDIC again addressed the charging of multiple non-sufficient funds fees for transactions presented multiple times against insufficient funds in the customer's account. *See* Ex. B hereto (FDIC Consumer Compliance Supervisory Highlights, Mar. 2022). FDIC examiners have scrutinized this issue in recent exams, with some exams remaining open pending resolution of the issue.

74. In the Supervisory Highlights, the FDIC discussed potential consumer harm from this practice in terms of both deception and unfairness under the Federal Trade Commission Act Section 5's prohibition on unfair or deceptive acts or practices. The FDIC stated that the "failure to disclose material information to customers about re-presentment practices and fees" may be deceptive.

75. During 2021, the FDIC identified consumer harm when financial institutions charged multiple NSF fees for the re-presentment of unpaid transactions. Terms were not clearly defined and disclosure forms did not explain that the same transaction might result in multiple NSF fees if re-presented. While case-specific facts would determine whether a practice is in violation of a law or regulation, the failure to disclose material information to customers about re-

presentment practices and fees may be deceptive. This practice may also be unfair if there is the likelihood of substantial injury for customers, if the injury is not reasonably avoidable, and if there is no countervailing benefit to customers or competition. For example, there is risk of unfairness if multiple fees are assessed for the same transaction in a short period of time without sufficient notice or opportunity for consumers to bring their account to a positive balance.

76. In its staff analysis of the issue, the American Bankers Association recommended that banks review their deposit account agreement to ensure it states clearly that a separate NSF fee will be assessed whenever the same item is resubmitted against insufficient funds. ABA also encouraged banks, if scrutinized by a regulator, to explain the significant logistical challenges with identifying items that have been resubmitted by the merchant for payment against insufficient funds. ABA is updating its staff analysis of this issue to reflect the Supervisory Highlights.

77. This abusive practice is not universal in the financial services industry. Indeed, major banks like Chase—the largest consumer bank in the country—do not undertake the practice of charging more than one fee on the same item when it is reprocessed. Instead, Chase charges one fee even if an item is reprocessed for payment multiple times.

78. The Contract allows Defendant to take certain steps when paying a check, electronic payment item, or ACH item when the accountholder does not have sufficient funds to cover it. Specifically, Defendant may (a) pay the item and charge a \$35 fee; or (b) reject the item and charge a \$35 fee.

79. In contrast to the Contract, however, Defendant regularly assesses two or more \$35 fees on an item.

A. The Imposition of Multiple Fees on a Single Item Violates Defendant's Express Promises and Representations

80. The Contract states:

Overdraft/NSF Paid Fee Per Item** \$ 35.00

Overdraft/NSF Return Fee Per Item** \$ 35.00

**The NSF (non-sufficient funds) fees apply to overdrafts created by check, in-person withdrawal, or other electronic means, as applicable.

Ex. A at 29.

81. The Contract therefore promises that a “Fee” (singular) of “\$35.00” “Per Item” will be assessed.

82. In breach of this promise, Defendant assesses multiple fees – up to \$105.00 – per item.

83. The same “item” on an account cannot conceivably become a new one when it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit it.

84. There is zero indication anywhere in the Contract that the same “item” is eligible to incur multiple fees.

85. Even if Defendant reprocesses an instruction for payment, it is still the same “item.” Its reprocessing is simply another attempt to effectuate an account holder’s original order or instruction.

86. The Contract never discusses a circumstance where Defendant may assess multiple fees for a single check, electronic payment item, or ACH item that was returned for insufficient funds and later reprocessed one or more times and returned again.

87. In sum, Defendant promises that one fee will be assessed on an item, and this term must mean all iterations of the same instruction for payment. As such, Defendant breached the Contract when it charged more than one fee per item.

88. Reasonable consumers understand any given authorization for payment to be one, singular “item,” as that term is used in the Contract.

89. Taken together, the representations and omissions identified above convey to customers that all submissions for payment of the same item will be treated as the same “item,” which Defendant will either authorize (resulting in an overdraft item) or reject (resulting in a returned item) when it decides there are insufficient funds in the account. Nowhere do Defendant and its customers agree that Defendant will treat each reprocessing of a check, electronic payment item, or ACH item as a separate item, subject to additional fees.

90. Customers reasonably understand, based on the language of the Contract, that Defendant’s reprocessing of checks, electronic payment items, and ACH items are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger fees. In other words, it is always the same item.

91. Banks and credit unions like Defendant that employ this abusive practice require their accountholders to expressly agree to it—something Defendant here did not do.

92. Community Bank, NA, discloses its fee practice in its online banking agreement, in all capital letters, as follows:

We cannot dictate whether or not (or how many times) a merchant will submit a previously presented item. **You may be charged more than one Overdraft or NSF Fee if a merchant submits a single transaction multiple times after it has been rejected or returned.**

Overdraft and Unavailable Funds Practices Disclosure, Community Bank N.A. 5 (Nov. 12, 2019), <https://bit.ly/3uQafe7> (emphasis added).

93. Defendant’s Contract provides no such authorization, and actually promises the opposite—Defendant may charge, at most, a fee, per item.

B. Plaintiff's Experience

94. In support of Plaintiff's claim, Plaintiff offers an example of fees that should not have been assessed against Plaintiff's checking account. As alleged below, Defendant: (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

95. On or around August 20, 2018, Plaintiff attempted a single payment.

96. Defendant rejected payment of that item due to insufficient funds in Plaintiff's account and charged a \$35.00 fee for doing so.

97. Unbeknownst to Plaintiff and without Plaintiff's request to Defendant to reprocess the item, on August 24, 2018, Defendant processed the same item again, but this time paid the item into overdraft and charged Plaintiff a second \$35.00 fee for doing so.

98. *In sum, Defendant charged Plaintiff \$70.00 in fees on an item.*

99. On or around February 7, 2019, Plaintiff attempted a single payment.

100. Defendant rejected payment of that item due to insufficient funds in Plaintiff's account and charged a \$35.00 fee for doing so.

101. Unbeknownst to Plaintiff and without Plaintiff's request to Defendant to reprocess the item, on February 15, 2019, Defendant processed the same item again, rejected the item again, and charged Plaintiff a second \$35.00 fee for doing so.

102. Defendant also assessed multiple fees on an item on or around February 12, 2019 and February 19, 2019; and February 7, 2019 and February 13, 2019.

103. Plaintiff understood the payment to be a single item as is laid out in the Contract, capable of receiving, at most, a single fee if Defendant returned it, or a single fee if Defendant paid it.

104. Defendant also understood that a “retry” of the original item was not a new item subject to a new fee because it labelled the re-presentment of the original item as a “RETRY PYMT” on its own bank statements.

III. NONE OF THESE FEES WERE ERRORS.

105. The improper fees charged by Defendant to Plaintiff’s account were not errors by Defendant, but rather were intentional charges made by Defendant as part of its standard processing of transactions.

106. Plaintiff therefore had no duty to report the fees as errors because they were not; instead, they were part of the systematic and intentional assessment of fees according to Defendant’s standard practices.

107. Moreover, any such reporting would have been futile as Defendant’s own contract admits that Defendant made a decision to charge the fees.

IV. THE IMPOSITION OF THESE IMPROPER FEES BREACHES DEFENDANT’S DUTY OF GOOD FAITH AND FAIR DEALING

108. Parties to a contract are required not only to adhere to the express conditions of the contract but also to act in good faith when they are invested with a discretionary power over the other party. This creates an implied duty to act in accordance with account holders’ reasonable expectations and means that the bank or credit union is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, the bank or credit union has a duty to honor transaction requests in a way that is fair to its customers and is prohibited from exercising its discretion to pile on even greater penalties on its account holders.

109. Here—in the adhesion agreements Defendant foisted on Plaintiff and its other customers—Defendant has provided itself numerous discretionary powers affecting customers’ accounts. But instead of exercising that discretion in good faith and consistent with consumers’

reasonable expectations, Defendant abuses that discretion to take money out of consumers' accounts without their permission and contrary to their reasonable expectations that they will not be charged improper fees.

110. Defendant abuses its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it assesses fees in this manner. By *always* assessing these fees to the prejudice of Plaintiff and other customers, Defendant breaches their reasonable expectations and, in doing so, violates its duty to act in good faith. This is a breach of Defendant's implied covenant to engage in fair dealing and to act in good faith.

111. It was bad faith and totally outside Plaintiff's reasonable expectations for Defendant to use its discretion in this way.

112. When Defendant charges improper fees in this way, Defendant uses its discretion to interpret the meaning of key terms in an unreasonable way that violates common sense and reasonable consumers' expectations. Defendant uses its contractual discretion to set the meaning of those terms to choose a meaning that directly causes more fees.

CLASS ALLEGATIONS

113. Plaintiff brings this action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P. 23.

114. The proposed Classes are defined as:

All Defendant checking accountholders who, during the applicable statute of limitations, were checking account holders of Defendant and were assessed an overdraft fee on a debit card transaction that was authorized on sufficient funds and settled on negative funds in the same amount for which the debit card transaction was authorized (the "APSN Class").

All Defendant checking accountholders who, during the applicable statute of limitations period through the present, were assessed multiple fees on an item on a Defendant checking account ("Multiple Fee Class").

115. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

116. Excluded from the Classes are Defendant, its parents, subsidiaries, affiliates, officers, directors, legal representatives, successors, and assigns; any entity in which Defendant has a controlling interest; all customers members who make a timely election to be excluded; governmental entities; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

117. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be ascertained only by resort to Defendant's records.

118. Plaintiff's claims are typical of the claims of the Classes in that Plaintiff, like all members of the Classes, was charged improper fees. Plaintiff, like all members of the Classes, has been damaged by Defendant's misconduct in that they have been assessed unlawful fees. Furthermore, the factual basis of Defendant's misconduct is common to all members of the Classes and represents a common thread of deceptive and unlawful conduct resulting in injury to all members of the Classes. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Classes.

119. The questions in this action are ones of common or general interest such that there is a well-defined community of interest among the members of the Classes. These questions predominate over questions that may affect only individual class members because Defendant has acted on grounds generally applicable to the Classes.

120. Among the questions of law and fact common to the Classes include:

a. Whether Defendant violated its Contract by charging fees OD Fees on

APSN Transactions;

- b. Whether Defendant violated its Contract by charging multiple fees on an item;
- c. Whether Defendant breached its covenant of good faith and fair dealing with Plaintiff and other members of the Classes through its fee policies and practices;
- d. Whether Defendant was unjustly enriched by its fee assessment practices;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory and injunctive relief to which the Classes are entitled.

121. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Classes will continue to suffer losses and Defendant's misconduct will proceed without remedy.

122. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

123. Plaintiff is committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions, particularly on behalf of

consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

124. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all members of the Classes, is at risk of additional improper fees. Plaintiff and the Classes are entitled to injunctive and declaratory relief as a result of the conduct complained of herein. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to commit its illegal actions.

CAUSE OF ACTION ONE
Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing
(On Behalf of Plaintiff and the APSN Class)

125. Plaintiff realleges and incorporates by reference all the foregoing allegations as if they were fully set forth herein.

126. Plaintiff and Defendant have contracted for bank account services, as embodied in the Contract. Ex. A.

127. All contracts entered by Plaintiff and the APSN Class are identical or substantively identical because Defendant's form contracts were used uniformly.

128. Defendant has breached the express terms of its own agreements as described herein.

129. Under West Virginia law, good faith is an element of every contract between financial institutions and their customers because banks and credit unions are inherently in a superior position to their checking account holders and, from this superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

130. Good faith and fair dealing means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the

substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

131. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain and abuse of a power to specify terms.

132. Defendant abused the discretion it granted to itself when it charged fees on transactions that did not overdraw an account.

133. Defendant also abused the discretion it granted to itself by defining key terms in a manner that is contrary to reasonable account holders' expectations.

134. In these and other ways, Defendant violated its duty of good faith and fair dealing.

135. Defendant willfully engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) unfairly and unconscionably maximizing fee revenue from Plaintiff and other members of the APSN Class.

136. Plaintiff and members of the APSN Class have performed all, or substantially all, of the obligations imposed on them under the Contract.

137. Plaintiff and members of the APSN Class have sustained damages as a result of Defendant's breaches of contract, including breaches of contract through violations of the covenant of good faith and fair dealing.

138. Plaintiff and the members of the APSN Class are entitled to injunctive relief to prevent Defendant from continuing to engage in the foregoing conduct.

CAUSE OF ACTION TWO

**Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing
(On Behalf of Plaintiff and the Multiple Fee Class)**

139. Plaintiff realleges and incorporates by reference all the foregoing allegations as if they were fully set forth herein.

140. Plaintiff and Defendant have contracted for bank account services, as embodied in the Contract. Ex. A.

141. All contracts entered by Plaintiff and the Multiple Fee Class are identical or substantively identical because Defendant's form contracts were used uniformly.

142. Defendant has breached the express terms of its own agreements as described herein.

143. Under West Virginia law, good faith is an element of every contract between financial institutions and their customers because banks and credit unions are inherently in a superior position to their checking account holders and, from this superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

144. Good faith and fair dealing means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

145. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain and abuse of a power to specify terms.

146. Defendant abused the discretion it granted to itself when it charged multiple fees on an item.

147. Defendant also abused the discretion it granted to itself by defining key terms in a manner that is contrary to reasonable account holders' expectations.

148. In these and other ways, Defendant violated its duty of good faith and fair dealing.

149. Defendant willfully engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) unfairly and unconscionably maximizing fee revenue from Plaintiff and other members of the Multiple Fee Class.

150. Plaintiff and members of the Multiple Fee Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

151. Plaintiff and members of the Multiple Fee Class have sustained damages as a result of Defendant's breaches of contract, including breaches of contract through violations of the covenant of good faith and fair dealing.

152. Plaintiff and the members of the Multiple Fee Class are entitled to injunctive relief to prevent Defendant from continuing to engage in the foregoing conduct.

CAUSE OF ACTION THREE
UNJUST ENRICHMENT
(On behalf of Plaintiff and the Classes)

153. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

154. Plaintiff, individually and on behalf of the Classes, asserts a common law claim for unjust enrichment. This claim is brought solely in the alternative to Plaintiff's breach of contract claims and applies only if the parties' contracts are deemed unconscionable or otherwise

unenforceable for any reason. In such circumstances, unjust enrichment will dictate that Defendant disgorge all improperly assessed fees.

155. Defendant has knowingly accepted and retained a benefit in the form of improper fees to the detriment of Plaintiff and the members of the Classes, who reasonably expect to be compensated for their injury.

156. Defendant has retained this benefit through its fee maximization scheme, and such retention violates fundamental principles of justice, equity, and good conscience.

157. Defendant should not be allowed to profit or enrich itself inequitably and unjustly at the expense of Plaintiff and the members of the Classes and should be required to make restitution to Plaintiff and the members of the Classes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Classes, respectfully requests the Court to enter an Order:

- a. certifying the proposed Classes, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class counsel;
- b. declaring Defendant's fee policies and practices alleged in this Complaint to be wrongful and unconscionable in light of its contractual promises;
- c. enjoining Defendant from breaching its Contract;
- d. awarding Plaintiff and the Classes restitution in an amount to be proven at trial;
- e. awarding actual damages in an amount according to proof;
- f. awarding pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- g. awarding costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees and costs pursuant to applicable law; and
- h. awarding such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

Dated: August 5, 2022

Respectfully submitted,

/s/ Rodney A. Smith

Rodney A. Smith (WVSB # 9750)

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* *Pro Hac Vice* applications to be submitted

*Counsel for Plaintiff and the Proposed
Classes*

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Penny Lewis

(b) County of Residence of First Listed Plaintiff Fayette Cnty., KY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Rodney A. Smith, Esquire (WVSB # 9750) ROD SMITH LAW PLLC 108 1/2 Capitol St., Ste. 300, Charleston, WV 25301

DEFENDANTS

Pendleton Community Bank, Inc.

County of Residence of First Listed Defendant Pendleton Cnty., WV (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2) Brief description of cause: breach of contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/05/2022 SIGNATURE OF ATTORNEY OF RECORD /s/Rodney A. Smith

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Electronic Fund Transfers

Your Rights and Responsibilities

The Electronic Fund Transfers we are capable of handling for consumers are indicated below, some of which may not apply to your account. Some of these may not be available at all terminals. Please read this disclosure carefully because it tells you your rights and obligations for these transactions. Options following a checkbox () only apply if checked. You should keep this notice for future reference.

Types of Transfers, Frequency and Dollar Limitations

(a) Prearranged Transfers.

- Preauthorized credits. You may make arrangements for certain direct deposits to be accepted into your
 - checking savings prepaid account(s).
- Preauthorized payments. You may make arrangements to pay certain recurring bills from your
 - checking savings prepaid account(s).
-

(b) Telephone Transfers. You may access your account(s) by telephone at 888-835-3265 using a touch tone phone, your account numbers, and Personal Identification Number (PIN) to:

- Transfer funds from checking to savings
- Transfer funds from savings to checking
- Transfer funds from _____ to _____
- Transfer funds from _____ to _____
- Make payments from checking to loan accounts with us
- Make payments from savings accounts to loan account(s) with us
- Make payments from _____ to _____
- Get checking account(s) information
- Get saving account(s) information
- Get loan account information
- Get certificate of deposit or IRA account information

(c) ATM Transfers. You may access your account(s) by ATM using your Debit Master Card and personal identification number to:

- Making deposits to checking accounts
- Make deposits to savings accounts
- Get cash withdrawals from checking accounts you may withdraw no more than 505.00 per day
- Get cash withdrawals from savings accounts you may withdraw no more than 505.00 per day
- Transfer funds from savings to checking
- Transfer funds from checking to savings
- Transfer funds from _____ to _____
- Make payments from checking account to _____
- Make payments from _____ to _____
- Get checking account(s) information
- Get saving account(s) information
- There is a replacement card fee of \$6.99 per card.
-

(d) Point-Of-Sale Transactions.

- Using your card:
- You may access your checking account _____ account(s) to purchase goods (in person, by phone, by computer), pay for services (in person, by phone, by computer), get cash from a merchant, if the merchant permits, or from a participating financial institution, and do anything that a participating merchant will accept.

Types of Transfers, Frequency and Dollar Limitations, Continued

You may not exceed more than \$ 2,000.00 in transactions per day

You may not make international transactions unless you first notify us.

(e) Computer Transfers. You may access your account(s) by computer by
www.yourbank.bank

and using your
to:

Password

Transfer funds from checking to savings

Transfer funds from savings to checking

Transfer funds from to

Transfer funds from to

Make payments from checking to loan accounts with us

Make payments from savings account to loan account(s) with us

Make payments from to

Get checking account(s) information

Get saving account(s) information

Get loan account, certificate of deposit, and IRA account information

See additional information on page 9 for other computer transfers

(f) Mobile Banking Transfers. You may access your account(s) by web-enabled cell phone by self-registering

and using your
to:

PCB's online banking application
mobile device

Transfer funds from checking to savings

Transfer funds from savings to checking

Transfer funds from to

Transfer funds from to

Make payments from checking to loan accounts with us

Make payments from savings accounts to loan accounts with us

Make payments from to

Get checking account(s) information

Get saving account(s) information

Get loan account, certificate of deposit, and IRA account information

See additional information on page 9 for other mobile deposit transfers

You may be charged access fees by your cell phone provider based on your individual plan. Web access is needed to use this service. Check with your cell phone provider for details on specific fees and charges.

(g) Electronic Fund Transfers Initiated By Third Parties. You may authorize a third party to initiate electronic fund transfers between your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check to an electronic fund transfer or to electronically pay a returned check charge can occur when a merchant provides you with notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, these third party transfers will require you to provide the third party with your account number and financial institution information. This information can be found on your check as well as on a deposit or withdrawal slip. Thus, you should only provide your financial institution and account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

Types of Transfers, Frequency and Dollar Limitations, Continued

(g) EFTs Initiated By Third Parties, Continued

- Electronic check conversion.** You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or pay bills. You may:
 - Not exceed more than _____ payments by electronic check per _____.
 - Make payments by electronic check from _____ . Payments are limited to _____ per _____.

- Electronic returned check charge.** You may authorize a merchant or other payee to initiate an electronic fund transfer to collect a charge in the event a check is returned for insufficient funds. You may:
 - Make no more than _____ payments per _____ for electronic payment of charges for checks returned for insufficient funds.
 - Make electronic payment of charges for checks returned for insufficient funds from _____ . Payments are limited to _____ per _____.
 -

General Limitations

In addition to those limitations on transfers elsewhere described, if any, the following limitations apply:

- Transfer or withdrawals from a MM or savings account to another account of yours or to a third party by means of a preauthorized or automatic transfer or telephone order or instruction, computer transfer, or by check, draft, debit card or similar order to a third party, are limited to six _____ per statement cycle . If you exceed the transfer limitations set forth above, your account shall be subject to closure.
-

Fees

- We charge _____ each _____ to our customers whose accounts are set up to use _____ .
 - We charge _____ each _____ but only if the _____ balance in the _____ falls below _____ during the _____ .
 - Please refer to _____ for a list of all the prepaid account/card fees.
 - No charge for withdrawals at ATM machines owned by us; there is a \$1.99 withdrawal charge at other banks ATM's.
 - For balance inquiries and transfers at ATM machines not owned by Pendleton Community Bank \$.89 fee.
- Except as indicated above, we do not charge for Electronic Fund Transfers.

ATM Operator/Network Fees: When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

Documentation

- (a) **Terminal Transfers.** You can get a receipt at the time you make a transfer to or from your account using a(n)
- automated teller machine
 - point-of-sale terminal.
- You may not get a receipt if the amount of the transfer is \$15 or less.

(b) **Preauthorized Credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at the telephone number listed below to find out whether or not the deposit has been made.

(c) **In addition,**

- You will get a monthly account statement from us, unless there are no transfers in a particular month. In any case you will get a statement at least quarterly.
- You will get a quarterly statement from us on your savings account if the only possible electronic transfer to or from the account is a preauthorized credit.
- If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.
- You may obtain information about the amount of money you have remaining in your prepaid account by calling the telephone number listed below. This information, along with a 12-month history of account transactions, is also available online at
- If your prepaid account is registered with us, you also have the right to obtain at least 24 months of written history of account transactions by calling or writing us at the telephone number or address listed in this disclosure. You will not be charged a fee for this information unless you request it more than once per month.
- You also have the right to obtain at least 24 months of written history of your prepaid account transactions by calling or writing us at the telephone number or address listed in this disclosure. You will not be charged a fee for this information unless you request it more than once per month.
-

Preauthorized Payments

(a) **Right to stop payment and procedure for doing so.** If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call or write us at the telephone number or address listed in this disclosure, in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.

- We charge \$38.00 for each stop payment.

(b) **Notice of varying amounts.** If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) **Liability for failure to stop payment of preauthorized transfer.** If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Financial Institution's Liability

(a) **Liability for failure to make transfers.** If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses and damages. However, there are some exceptions. We will not be liable, for instance:

- ◆ If, through no fault of ours, you do not have enough money in your account to make the transfer.
- ◆ If the transfer would go over the credit limit on your overdraft line.
- ◆ If the automated teller machine where you are making the transfer does not have enough cash.
- ◆ If the terminal or system was not working properly and you knew about the breakdown when you started the transfer.
- ◆ If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- ◆ There may be other exceptions stated in our agreement with you.

Confidentiality

We will disclose information to third parties about your account or the transfers you make:

- (1) where it is necessary for completing transfers; or
- (2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
- (3) in order to comply with government agency or court orders; or
- (4) if you give us written permission.
 as explained in the separate Privacy Disclosure.

Unauthorized Transfers

(a) **Consumer Liability.** Tell us at once if you believe your card and/or code has been lost or stolen, or (if your account can be accessed by check) if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card and/or code, you can lose no more than \$50 if someone used your card and/or code without your permission. Also, if you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code without your permission if you had told us, you could lose as much as \$500. Also, if your statement (or for a prepaid account where no statement is sent, if your electronic history or written history) shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was transmitted to you (or for a prepaid account where no statement is sent, 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared), you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time period.

Visa® Debit Card. Additional Limits on Liability for
 Unless you have been negligent or have engaged in fraud, you will not be liable for any unauthorized transactions using your lost or stolen Visa card. This additional limit on liability does not apply to ATM transactions outside of the U.S., to ATM transactions not sent over Visa or Plus networks, to anonymous Visa prepaid card transactions, or to

Unauthorized Transfers, Continued

transactions using your Personal Identification Number which are not processed by Visa. Visa is a registered trademark of Visa International Service Association.

Mastercard® Debit Card. Additional Limits on Liability for

You will not be liable for any unauthorized transactions using your Mastercard debit card if: (i) you can demonstrate that you have exercised reasonable care in safeguarding your card from the risk of loss or theft, and (ii) upon becoming aware of a loss or theft, you promptly report the loss or theft to us. This additional limit on liability does not apply to a prepaid card until such time as the prepaid card is registered with us and we have completed our customer identification program requirements. Mastercard is a registered trademark, and the circles design is a trademark of Mastercard International Incorporated.

- If you do NOT inform us promptly of the loss or theft of your MasterCard Debit Card, you will be subject to the same liability as outlined in Subsection (a) above.

(b) Contact in event of unauthorized transfer. If you believe your card and/or code has been lost or stolen, call or write us at the telephone number or address listed at the end of this disclosure. You should also call the number or write to the address listed at the end of this disclosure if you believe a transfer has been made using the information from your check without your permission.

- (a) Consumer Liability.** There are no limitations on your liability for unauthorized transfers using this prepaid card. This is because we do not have a consumer identification or verification process for this prepaid card.

Error Resolution Notice

- In Case of Errors or Questions About Your Electronic Transfers, Call or Write us at the telephone number or address listed below, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (5 business days involving a Visa® point-of-sale transaction, other than an anonymous Visa prepaid card transaction, processed by Visa or 20 business days if the transfer involved a new account) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days (90 days if the transfer involved a new account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days (5 business days involving a Visa point-of-sale transaction, other than an anonymous Visa prepaid card transaction, processed by Visa or 20 business days if the transfer involved a new account) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. An account is considered a new account for 30 days after the first deposit is made, if you are a new customer.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

Error Resolution Notice, Continued

- There is not an error resolution process for prepaid cards. This is because we do not have a consumer identification or verification process for the prepaid cards we offer.
- In Case of Errors or Questions About Your Prepaid Account Telephone or Write at the telephone number or address listed in this disclosure as soon as you can, if you think an error has occurred in your prepaid account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling or writing us at the telephone number or address listed in this disclosure. You will need to tell us:

- (1) Your name and prepaid account number.
- (2) Why you believe there is an error, and the dollar amount involved.
- (3) Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (5 business days involving a Visa point-of-sale transaction, other than an anonymous Visa prepaid card transaction, processed by Visa) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, and your account is registered with us, we will credit your account within 10 business days (5 business days involving a Visa point-of-sale transaction, other than an anonymous Visa prepaid card transaction, processed by Visa) for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at the telephone number listed in this disclosure or visit

Keep reading to learn more about how to register your card.

- Warning regarding unverified prepaid accounts.** It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to the website or call us at the telephone number listed in this disclosure. We will ask you for identifying information about yourself (including your full name, address, date of birth, and Social Security Number or government-issued identification number, so that we can verify your identity.

Important Information Regarding Your Prepaid Card

- FDIC insurance eligibility for your prepaid card.**

Be sure to register your card for FDIC insurance eligibility and other protections.

Your funds are eligible for FDIC insurance.

Your funds will be held at or transferred to us, an FDIC insured institution. Once here, your funds are insured up to \$250,000 by the FDIC in the event we fail, if specific deposit insurance requirements are met and your card is registered. See [fdic.gov/deposit/deposits/prepaid.html](https://www.fdic.gov/deposit/deposits/prepaid.html) for details.

Important Information Regarding Your Prepaid Card, Continued

NCUA insurance for your prepaid card, if eligible.

Be sure to register your card for NCUA insurance, if eligible, and other protections.

Your funds are NCUA insured, if eligible.

Your funds will be held at or transferred to us, an NCUA-insured institution. Once here, if specific share insurance requirements are met and your card is registered, your funds are insured up to \$250,000 by the NCUA in the event we fail.

NOT FDIC or NCUA insured. The funds in our prepaid card are not FDIC or NCUA insured.

Treat this card like cash.

Your funds will be held at or transferred to us. If we fail, you are not protected by FDIC deposit or NCUA share insurance and you could lose some or all of your money.

Register your card for other protections.

No overdraft/credit feature. There is no overdraft/credit feature associated with your prepaid card.

Prepaid account information or complaints. For general information about prepaid accounts, visit cfpb.gov/prepaid. If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit cfpb.gov/complaint.

Our contact information. You can use the contact information listed in this disclosure to get more information about your prepaid card. Contact us by: phone mail at our website

By signing below customer acknowledges receipt of pages 1, 2, 3, 4, 5, 6, 7, 8 and 9 of this notice:

Signed

Dated

INSTITUTION (name, address, telephone number, etc., and business days)

For problem resolution call or write:

PENDLETON COMMUNITY BANK
835 E MAIN ST
OAK HILL, WV 25901
(304) 469-8046

Our business days are Monday through Friday - Holidays not included.

Additional Information

- (e) Computer Transfers (continued): You may access your account(s) to:
- * Pay bills through online bill pay.
 - You may not exceed more than \$10,000.00 in transactions per day
 - * Pay other people through Pay a Person (P2P).
 - Money can be sent by email, text message, direct deposit or check.
 - For email or text delivery methods, you may not exceed more than \$2,500.00 per transaction or more than \$2,500.00 in transactions per day.
 - For other delivery methods, you may not exceed more than \$1,000.00 per transaction or more than \$2,000.00 in transactions per day
 - * Send a gift or make a donation through Gift Pay
 - You may not exceed more than \$10,000.00 in transactions per day
 - We will charge you \$2.99 for each gift check and \$1.99 for each donation

- (f) Mobile Banking Transfers (continued)
- * Pay bills through online bill pay.
 - You may not exceed more than \$10,000.00 in transactions per day
 - * Pay other people through Pay a Person (P2P).
 - Money can be sent by email, text message, direct deposit or check.
 - For email or text delivery, you may not exceed more than \$2,500.00 per transaction or more than \$2,500.00 in transactions per day
 - For other delivery methods, you may not exceed more than \$1,000.00 per transaction or more than \$2,000.00 in transactions per day.

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500.00 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

PENDLETON COMMUNITY BANK
 835 E MAIN ST
 OAK HILL, WV 25901
 (304) 469-8046

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include —

- ◆ A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- ◆ An estimate of the amount of your loss;
- ◆ An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- ◆ A copy of the substitute check or the following information to help us identify the substitute check: _____
 Check number, date of check, amount of check and to whom the check
 was written. _____ .

Terms and Conditions of Your Account

Contents:

- | | |
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(1) Important Information about Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(2) Agreement

This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully and retain it for future reference. If you sign the signature card or open or continue to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

(2) Agreement, Continued

This agreement is subject to applicable federal laws, the laws of the state of West Virginia and other applicable rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

1. summarize some laws that apply to common transactions;
2. establish rules to cover transactions or events which the law does not regulate;
3. establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
4. give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document. Nothing in this document is intended to vary our duty to act in good faith and with ordinary care when required by law.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. However, this agreement does not intend, and the terms "you" and "your" should not be interpreted, to expand an individual's responsibility for an organization's liability. If this account is owned by a corporation, partnership or other organization, individual liability is determined by the laws generally applicable to that type of organization. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

(3) Liability

You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges, without notice to you, directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and we can deduct any amounts deposited into the account and apply those amounts to the shortage. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

You will be liable for our costs as well as for our reasonable attorneys' fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your account. This includes, but is not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming an interest in your account. This also includes any action that you or a third party takes regarding the account that causes us, in good faith, to seek the advice of an attorney, whether or not we become involved in the dispute. All costs and attorneys' fees can be deducted from your account when they are incurred, without notice to you.

(4) Deposits

We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Unless prohibited by law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid

(4) Deposits, Continued

by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing indorsement, claim of alteration, encoding error, counterfeit cashier's check or other problem which in our judgment justifies reversal of credit. You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check or draft for deposit, we may require any third-party indorsers to verify or guarantee their indorsements, or indorse in our presence.

(5) Withdrawals

Generally. Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs to open the account or has authority to make withdrawals may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person who signs or has authority to make withdrawals to indorse any item payable to you or your order for deposit to this account or any other transaction with us.

Postdated Checks. A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. Because we process checks mechanically, your notice will not be effective and we will not be liable for failing to honor your notice unless it precisely identifies the number, date, amount and payee of the item.

Checks and Withdrawal Rules. If you do not purchase your check blanks from us, you must be certain that we approve the check blanks you purchase. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us or by any method we do not specifically permit. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted by our policy, or which is for an amount greater or less than any withdrawal limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply any frequency limitations. In addition, we may place limitations on the account until your identity is verified.

Even if we honor a nonconforming request, we are not required to do so later. If you violate the stated transaction limitations (if any), in our discretion we may close your account or reclassify your account as another type of account. If we reclassify your account, your account will be subject to the fees and earnings rules of the new account classification.

If we are presented with an item drawn against your account that would be a "substitute check," as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

Cash Withdrawals. We recommend you take care when making large cash withdrawals because carrying large amounts of cash may pose a danger to your personal safety. As an alternative to making a large cash withdrawal, you may want to consider a cashier's check or similar instrument. You assume full responsibility of any loss in the event the cash you withdraw is lost, stolen, or destroyed. You agree to hold us harmless from any loss you incur as a result of your decision to withdraw funds in the form of cash.

Multiple Signatures, Electronic Check Conversion, and Similar Transactions. An electronic check conversion transaction is a transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation. In these types of transactions the check or similar item is either removed from circulation (truncated) or given back to you. As a result, we have no opportunity to review the signatures or otherwise examine the original check or item. You agree that, as to these or any items as to which we have no opportunity to examine the signatures, you waive any requirement of multiple signatures.

(5) Withdrawals, Continued

Notice of Withdrawal. We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account, other than a time deposit or demand deposit, or from any other savings deposit as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

(6) Ownership of Account and Beneficiary Designation

These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds.

Individual Account. This is an account in the name of one person.

Joint Account - No Survivorship (*As Tenants In Common*). This is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the number of signatures necessary for withdrawal.

Joint Account - With Survivorship. If such an account ownership is selected, each joint tenant intends and agrees that the account balance upon his or her death shall be the property of the surviving joint tenant, and if more than one survives, they shall remain as joint tenants with right of survivorship between them.

Revocable Trust or Pay-on-Death Account. If two or more of you create this type of account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

(7) Notice to Joint Account Holders

This provision does not apply to joint accounts if the signatures of all of the account owners are required to make a withdrawal.

This joint account is payable in both your name "or" in the name of the other person(s) listed on the account (Example "Mr. Smith or Mrs. Smith").

Please be advised and forewarned that:

- ◆ All the money in this joint account may be withdrawn by anyone named on this account; or may be pledged as security for a loan or debt by anyone named on the account.
 - UNLESS, prior written notice is given to the bank not to permit it.
- ◆ Despite any notification to the bank
 - The bank may pay the entire account balance to a creditor or other legal claimant pursuant to legal process.

(8) Business, Organization, and Association Accounts

Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. You represent that you have the authority to open and conduct business on this account on behalf of the entity. We may require the governing body of the entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the entity.

(9) Stop Payments

The rules in this section cover stopping payment of items such as checks and drafts. Rules for stopping payment of other types of transfers of funds, such as consumer electronic fund transfers, may be established by law or our policy. If we have not disclosed these rules to you elsewhere, you may ask us about those rules.

We may accept an order to stop payment on any item from any one of you. You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. Because stop-payment orders are handled by computers, to be effective, your stop-payment order must precisely identify the number, date, and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not. Generally, if your stop-payment order is given to us in writing it is effective for six months. Your order will lapse after that time if you do not renew the order in writing before the end of the six-month period. If the original stop-payment order was oral your stop-payment order will lapse after 14 calendar days if you do not confirm your order in writing within that time period. We are not obligated to notify you when a stop-payment order expires.

If you stop payment on an item and we incur any damages or expenses because of the stop payment, you agree to indemnify us for those damages or expenses, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal actions that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

(10) Telephone Transfers

A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Limitations on the number of telephonic transfers from a savings account, if any, are described elsewhere.

(11) Amendments and Termination

We may change any term of this agreement. Rules governing changes in interest rates are provided separately in the Truth-in-Savings disclosure or in another document. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Items presented for payment after the account is closed may be dishonored. When you close your account, you are responsible for leaving enough money in the account to cover any outstanding items to be paid from the account.

Reasonable notice depends on the circumstances, and in some cases such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the change or account closure becomes effective. For instance, if we suspect fraudulent activity with respect to your account, we might immediately freeze or close your account

(11) Amendments and Termination, Continued

and then give you notice. If we have notified you of a change in any term of your account and you continue to have your account after the effective date of the change, you have agreed to the new term(s).

(12) Notices

Any written notice you give us is effective when we actually receive it, and it must be given to us according to the specific delivery instructions provided elsewhere, if any. We must receive it in time to have a reasonable opportunity to act on it. If the notice is regarding a check or other item, you must give us sufficient information to be able to identify the check or item, including the precise check or item number, amount, date and payee. Written notice we give you is effective when it is deposited in the United States Mail with proper postage and addressed to your mailing address we have on file. Notice to any of you is notice to all of you.

(13) Statements

Your Duty to Report Unauthorized Signatures, Alterations, and Forgeries. You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations or forgeries in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

Your Duty to Report Other Errors or Problems. In addition to your duty to review your statements for unauthorized signatures, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error or problem - such as an encoding error or an unexpected deposit amount. Also, if you receive or we make available either your items or images of your items, you must examine them for any unauthorized or missing indorsements or any other problems. You agree that the time you have to examine your statement and items and report to us will depend on the circumstances. However, this time period shall not exceed 60 days. Failure to examine your statement and items and report any errors to us within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any errors on items identified in that statement and as between you and us the loss will be entirely yours.

Errors Relating to Electronic Fund Transfers or Substitute Checks (*For consumer accounts only*). For information on errors relating to electronic fund transfers (e.g., on-line, mobile, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

Duty to Notify if Statement Not Received. You agree to immediately notify us if you do not receive your statement by the date you normally expect to receive it. Not receiving your statement in a timely manner is a sign that there may be an issue with your account, such as possible fraud or identity theft.

(14) Direct Deposits

If we are required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into your account, you authorize us to deduct the amount of our liability to the federal government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

(15) Temporary Account Agreement

If the account documentation indicates that this is a temporary account agreement, each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

(16) Setoff

We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt any of you owe us now or in the future. If this account is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt a partnership owes us now or in the future, to the extent of your liability as a partner for the partnership debt. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated the due date.

This right of setoff does not apply to this account if prohibited by law. For example, the right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

(17) Check Processing

We process items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the items. This means that we do not individually examine all of your items to determine if the item is properly completed, signed and indorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have exercised ordinary care if our automated processing is consistent with general banking practice, even though we do not inspect each item. Because we do not inspect each item, if you write a check to multiple payees, we can properly pay the check regardless of the number of indorsements unless you notify us in writing that the check requires multiple indorsements. We must receive the notice in time for us to have a reasonable opportunity to act on it, and you must tell us the precise date of the check, amount, check number and payee. We are not responsible for any unauthorized signature or alteration that would not be identified by a reasonable inspection of the item. Using an automated process helps us keep costs down for you and all account holders.

(18) Check Cashing

We may charge a fee for anyone that does not have an account with us who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash such a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

(19) Truncation, Substitute Checks, and Other Check Images

If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

(20) Remotely Created Checks

Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line.

You warrant and agree to the following for every remotely created check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to create the check in the amount and to the payee that appears on the check; (2) you will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and (3) if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

(21) Unlawful Internet Gambling Notice

Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

(22) ACH and Wire Transfers

This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. Credit entries may be made by ACH. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

(23) Facsimile Signatures

Unless you make advance arrangements with us, we have no obligation to honor facsimile signatures on your checks or other orders. If we do agree to honor items containing facsimile signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose. You must notify us at once if you suspect that your facsimile signature is being or has been misused.

(24) Authorized Signer (Individual Accounts only)

A single individual is the owner. The authorized signer is merely designated to conduct transactions on the owner's behalf. The owner does not give up any rights to act on the account, and the authorized signer may not in any manner affect the rights of the owner or beneficiaries, if any, other than by withdrawing funds from the account. The owner is responsible for any transactions of the authorized signer. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf. The owner may terminate the authorization at any time, and the authorization is automatically terminated by the death of the owner. However, we may continue to honor the transactions of the authorized signer until: (a) we have received written notice or have actual knowledge of the termination of authority, and (b) we have a reasonable opportunity to act on that notice or knowledge. We may refuse to accept the designation of an authorized signer.

(25) Restrictive Legends or Indorsements

The automated processing of the large volume of checks we receive prevents us from inspecting or looking for restrictive legends, restrictive indorsements or other special instructions on every check. For this reason, we are not required to honor any restrictive legend or indorsement or other special instruction placed on checks you write unless we have agreed in writing to the restriction or instruction. Unless we have agreed in writing, we are not responsible for any losses, claims, damages, or expenses that result from your placement of these restrictions or instructions on your checks. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1,000.00." The payee's signature accompanied by the words "for deposit only" is an example of a restrictive indorsement.

(26) Account Transfer

This account may not be transferred or assigned without our prior written consent.

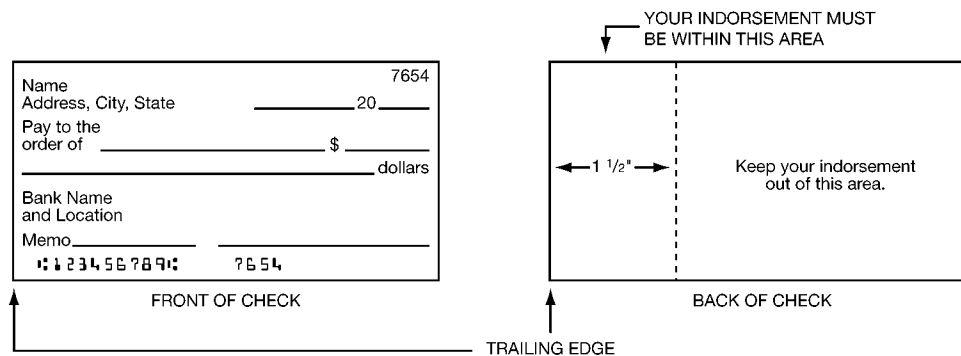
(27) Indorsements

We may accept for deposit any item payable to you or your order, even if they are not indorsed by you. We may give cash back to any one of you. We may supply any missing indorsement(s) for any item we accept for deposit or collection, and you warrant that all indorsements are genuine.

To ensure that your check or share draft is processed without delay, you must indorse it (sign it on the back) in a specific area. Your entire indorsement (whether a signature or a stamp) along with any other indorsement information (e.g., additional indorsements, ID information, driver's license number, etc.) must fall within 1 1/2" of the "trailing edge" of a check. Indorsements must be made in blue or black ink, so that they are readable by automated check processing equipment.

(27) Indorsements, Continued

As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all indorsement information within 1 1/2" of that edge.



It is important that you confine the indorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed indorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your indorsement, another indorsement, or information you have printed on the back of the check obscures our indorsement. These indorsement guidelines apply to both personal and business checks.

(28) Death or Incompetence

You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or is adjudicated (determined by the appropriate official) incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or adjudication of incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or adjudication of incompetence for up to ten (10) days after your death or adjudication of incompetence unless ordered to stop payment by someone claiming an interest in the account.

(29) Fiduciary Accounts

Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.

(30) Credit Verification

You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

(31) Legal Actions Affecting Your Account

If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section), we will comply with that legal action. Or, in our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action. Any fees or expenses we incur in responding to any legal action (including, without limitation, attorneys' fees and our internal expenses) may be charged against your account. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that we may charge for certain legal actions.

(32) Account Security

Duty to Protect Account Information and Methods of Access. It is your responsibility to protect the account numbers and electronic access devices (e.g., an ATM card) we provide you for your account(s). Do not discuss, compare, or share information about your account number(s) with anyone unless you are willing to give them full use of your money. An account number can be used by thieves to issue an electronic debit or to encode your number on a false demand draft which looks like and functions like an authorized check. If you furnish your access device and grant actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized.

Your account number can also be used to electronically remove money from your account, and payment can be made from your account even though you did not contact us directly and order the payment.

You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

Positive Pay and Other Fraud Prevention Services. Except for consumer electronic fund transfers subject to Regulation E, you agree that if we offer you services appropriate for your account to help identify and limit fraud or other unauthorized transactions against your account, and you reject those services, you will be responsible for any fraudulent or unauthorized transactions which could have been prevented by the services we offered. You will not be responsible for such transactions if we acted in bad faith or to the extent our negligence contributed to the loss. Such services include positive pay or commercially reasonable security procedures. If we offered you a commercially reasonable security procedure which you reject, you agree that you are responsible for any payment order, whether authorized or not, that we accept in compliance with an alternative security procedure that you have selected. The positive pay service can help detect and prevent check fraud and is appropriate for account holders that issue: a high volume of checks, a lot of checks to the general public, or checks for large dollar amounts.

(33) Telephonic Instructions

Unless required by law or we have agreed otherwise in writing, we are not required to act upon instructions you give us via facsimile transmission or leave by voice mail or on a telephone answering machine.

(34) Monitoring and Recording Telephone Calls and Consent to Receive Communications

Subject to federal and state law, we may monitor or record phone calls for security reasons, to maintain a record and to ensure that you receive courteous and efficient service. You consent in advance to any such recording.

To provide you with the best possible service in our ongoing business relationship for your account we may need to contact you about your account from time to time by telephone, text messaging or email. However, we first obtain your consent to contact you about your account in compliance with applicable consumer protection provisions in the federal Telephone Consumer Protection Act of 1991 (TCPA), CAN-SPAM Act and their related federal regulations and orders issued by the Federal Communications Commission (FCC).

- ◆ Your consent is limited to your account, and as authorized by applicable law and regulations.
- ◆ Your consent is voluntary and not conditioned on the purchase of any product or service from us.

With the above understandings, you authorize us to contact you regarding your account throughout its existence using any telephone numbers or email addresses that you have previously provided to us by virtue of an existing business relationship or that you may subsequently provide to us.

This consent is regardless of whether the number we use to contact you is assigned to a landline, a paging service, a cellular wireless service, a specialized mobile radio service, other radio common carrier service or any other service for which you may be charged for the call. You further authorize us to contact you through the use of voice, voice mail and text messaging, including the use of pre-recorded or artificial voice messages and an automated dialing device.

If necessary, you may change or remove any of the telephone numbers or email addresses at any time using any reasonable means to notify us.

(35) Claim of Loss

The following rules do not apply to a transaction or claim related to a consumer electronic fund transfer governed by Regulation E (e.g., an everyday consumer debit card or ATM transaction). The error resolution procedures for consumer electronic fund transfers can be found in our initial Regulation E disclosure titled, "Electronic Fund Transfers." For other transactions or claims, if you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

(36) Early Withdrawal Penalties (and involuntary withdrawals)

We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your notice of penalty for early withdrawals for additional information.

(37) Address or Name Changes

You are responsible for notifying us of any change in your address or your name. Unless we agree otherwise, change of address or name must be made in writing by at least one of the account holders. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. If provided elsewhere, we may impose a service fee if we attempt to locate you.

(38) Resolving Account Disputes

We may place an administrative hold on the funds in your account (refuse payment or withdrawal of the funds) if it becomes subject to a claim adverse to (1) your own interest; (2) others claiming an interest as survivors or beneficiaries of your account; or (3) a claim arising by operation of law. The hold may be placed for such period of time as we believe reasonably necessary to allow a legal proceeding to determine the merits of the claim or until we receive evidence satisfactory to us that the dispute has been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

(39) Waiver of Notices

To the extent permitted by law, you waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account. For example, if you deposit an item and it is returned unpaid or we receive a notice of nonpayment, we do not have to notify you unless required by federal Regulation CC or other law.

[This space intentionally left blank.]

(40) Additional Terms

Payment Order of Items

Date and Parties

Institution Name & Address PENDLETON COMMUNITY BANK OAK HILL OFFICE 835 E MAIN ST OAK HILL, WV 25901	Account Title & Address PENNY R LEWIS 2901 HERITAGE BLVD APT 4 JACKSON MI 49203	Date 09/24/2009 Account Number 546321 Internal Use
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Payment Order

The order in which items are paid is important if there is not enough money in your account to pay all of the items that are presented. The payment order can affect the number of items overdrawn and the amount of the fees you may have to pay. To assist you in managing your account, we are providing you with the following information regarding how we process those items.

If a check, item or transaction (other than an ATM or everyday debit card transaction) is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item for insufficient funds (NSF). The amounts of the overdraft and NSF fees are disclosed elsewhere, as are your rights to opt in to overdraft services for ATM and everyday debit card transactions, if applicable. We encourage you to make careful records and practice good account management. This will help you to avoid creating items without sufficient funds and potentially incurring the resulting fees.

Our policy is to process first
 in the order in which they are received. in numerical order. according to the dollar amount with the smallest items being processed first. Credits

We process second
 in the order in which they are received. in numerical order. according to the dollar amount with the smallest items being processed first. ATM Debit

We process third
 in the order in which they are received. in numerical order. according to the dollar amount with the smallest items being processed first. Bill Pay - Electronic

We process fourth
 in the order in which they are received. in numerical order. according to the dollar amount with the smallest items being processed first. POS - Point of Sale

We process fifth
 in the order in which they are received. in numerical order. according to the dollar amount with the smallest items being processed first. Transfer - sweeps, telephone, AFT (Automatic Funds Transfer)

We process sixth
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first. Return deposited item debit

We process seventh
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first. ACH Debits

We process eighth
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first. Checks

We process ninth
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first.

We process tenth
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first.

We process eleventh
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first.

We process twelfth
 in the order in which they are received. in numerical order. according to the dollar amount with
the smallest items being processed first.

Additional Terms

PENDLETON COMMUNITY BANK

****FUNDS AVAILABILITY DISCLOSURE****

YOUR ABILITY TO WITHDRAW FUNDS AT PENDLETON COMMUNITY BANK. Our policy is to generally make funds from cash and check deposits available to you on the same business day as the day we received your deposit. Once the funds are available, you can withdraw them in cash and/or we will use them to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. Business day cutoff times vary by branch location, with the earliest time being 5:00 p.m. Individual branch offices may have a later cutoff time. For the specific business day cutoff time for each office, contact the branch office or call 304-358-2311 for our listings. If you make a deposit before a branch's business day cutoff time on a business day in which we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after the business day cutoff time of that specific branch or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

RESERVATION OF RIGHT TO HOLD. In some cases, we will not make all of the funds that you deposited by check available to you according to the preceding schedule. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. However, the first \$225 of your deposit will be available on the first business day after the day of your deposit. If we are not going to make all funds from your deposit available on the same business day, you will be notified at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the business day after we receive your deposit. If you need the funds from a deposit right away, you should ask us when the funds will be available.

LONGER DELAYS MAY APPLY. We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

- * You deposit checks totaling more than \$5,525 on any one day.
- * You redeposited a check that has been returned unpaid.
- * You have overdrawn your account repeatedly in the last six months.
- * We believe a check you deposit will not be paid.
- * There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

HOLD ON OTHER FUNDS. If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it. If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

SPECIAL RULES FOR NEW ACCOUNTS. Special rules apply during the first 30 days your account is opened. Funds from electronic direct deposits and cash will be available to you on the day of deposit. Funds from wire transfers deposits and the first \$5,525 of a day's total deposits of cashier's, certified, teller's, traveler's and federal, state and local government checks will be available on the first business day after the day of your deposit if checks are payable to you. The excess over \$5,525 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than U.S. Treasury check) is not made in person to one of our employees, the first \$5,525 will not be available until the second business day after the day of deposit. Funds from all other checks will be available on the 10th business day after the day of deposit.

DEPOSITS AT AUTOMATED TELLER MACHINES. Funds from any deposit, whether in cash or by check, made at an automated teller machine ("ATM") owned or operated by us will be generally available on the first Business day after the business day of your deposit. If you make a deposit at an ATM that is owned and operated by us before 3:00 p.m. on a business day, we will consider the deposit made that day. However, if you make a deposit at an ATM owned and operated by us after 3:00 p.m. or on a day that we are not open, we will consider the deposit made on the next business day. All ATMs that we own or operate are identified as such on our machines.

PENDLETON COMMUNITY BANK
PO Box 487
Franklin, WV 26807
(304) 358-2311

SCHEDULE OF FEES
EFFECTIVE November 05, 2018
PENDLETON COMMUNITY BANK
 "We want to be **yourbank**"

Account Early Closing (within 90 days of opening).....	\$ 24.99
*No interest paid on Christmas Club accounts	
ATM Card Replacement.....	\$ 6.99
ATM Foreign Balance Inquires & Transfer.....	\$.89
ATM Foreign Transaction Fee.....	\$ 1.99
Business Online Bill-Pay (each item exceeding 25/month).....	\$ 0.49
Cashiers Checks.....	\$ 6.99
Counter Checks (each).....	\$ 0.99
Dormant Account Fee (per month) (inactivity of at least 2 years).....	\$ 4.99
Fax Transmission Sent (per page).....	\$ 1.49
Foreign Check Collection Fee.....	\$ 20.99
Foreign Currency Exchange (1% of amount).....	Minimum of \$ 25.99
Garnishments, Executions or Levies.....	\$125.00
Letters of Credit (1% of amount).....	Minimum of \$250.00
Money Market Account Excess Transaction Fee.....	\$ 9.99
Money Order.....	\$ 4.99
Night Deposit Locked Bag Purchase.....	\$ 17.49
Money Market Account Excess Transaction Fee.....	\$ 9.99
Overdraft/NSF Paid Fee Per Item**.....	\$ 35.00
Overdraft/NSF Return Fee Per Item**.....	\$ 35.00
Photocopies (per page).....	\$ 0.59
Overdraft/NSF Return Fee Per Item**.....	\$ 35.00
Research / Account Reconciliation per hour (1 hour minimum).....	\$ 24.99
Safe Deposit Box Drilling & Lock Replacement.....	\$159.99
Safe Deposit Box Lost Key.....	\$ 49.99
Safe Deposit Box Payment Late Charge.....	\$ 13.99
Stop Payments/Special Instructions.....	\$ 38.00
Sweep Overdraft Coverage Service (per sweep).....	\$ 9.99
Telephone Transfers between Accounts.....	\$ 4.99
Wire Transfer - Outgoing Domestic.....	\$ 24.99
Wire Transfer - Outgoing Foreign.....	\$ 59.99
Yearly Statement on CD - Personal Account.....	\$ 29.99
Yearly/Monthly Statement on CD - Business Account.....	\$164.99

**The NSF (non-sufficient funds) fees apply to overdrafts created by check, in-person withdrawal, or other electronic means, as applicable.

Pendleton Community Bank - Member FDIC

Consumer Compliance Supervisory HIGHLIGHTS

Federal Deposit Insurance Corporation



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Introduction

The global COVID-19 pandemic continues to impact financial institutions, consumers, and communities. This unique, challenging, and evolving situation resulted in financial institutions continuing to make adjustments to their operations to ensure consumers have access to the essential products and services they rely on. Similarly, the FDIC continued to conduct its consumer compliance examinations entirely offsite. Remote examinations leveraged technology and file-sharing tools to allow us to conduct our examinations in a virtual environment. The FDIC maintains appropriate resources to assist financial institutions, customers, and communities affected by COVID-19. Information about the FDIC's response to the pandemic and guidance for bankers and consumers is available on the [FDIC's Coronavirus website](#).

This publication provides an overview of the consumer compliance activities and issues identified through the FDIC's supervision of state non-member banks and thrifts in 2021.

This issue of the FDIC Consumer Compliance Supervisory Highlights includes:

- A summary of the FDIC's overall consumer compliance performance in 2021;
- A description of the most frequently cited violations and other consumer compliance examination observations;¹
- Information on regulatory developments;
- A summary of consumer compliance resources and information available to financial institutions; and
- An overview of trends in consumer complaints that were processed by the FDIC in 2021.

¹ The legal violations discussed in this issue of the FDIC Consumer Compliance Supervisory Highlights are based on the particular facts and circumstances observed by the FDIC in the course of its examinations. A conclusion that a legal violation exists may not lead to such a finding under different facts and circumstances. The finding of a violation requires an analysis of both the applicable law, and the particular facts and circumstances of the act or practice found at a particular institution.

Summary of Overall Consumer Compliance Performance in 2021

The FDIC supervises approximately 3,200 state-chartered banks and thrifts that are not members of the Federal Reserve System (supervised institutions). Most of these institutions are community banks that provide credit and services locally. The FDIC is responsible for evaluating supervised institutions for compliance with consumer protection, anti-discrimination, and community reinvestment laws.

The FDIC's consumer compliance examination program focuses on identifying, addressing, and mitigating the greatest potential risks to consumers, based on the business model and products offered by a particular institution. The FDIC conducts periodic risk-based examinations of supervised institutions for compliance with over 30 Federal consumer protection laws and regulations. In 2021, the FDIC conducted approximately 1,000 consumer compliance examinations. Overall, supervised institutions demonstrated effective management of their consumer compliance responsibilities.

The FDIC uses the Federal Financial Institutions Examination Council's (FFIEC) Uniform Interagency Consumer Compliance Rating System to evaluate supervised institutions' adherence to consumer protection laws and regulations. As of December 31, 2021, 99 percent of all FDIC-supervised institutions were rated satisfactory or better for consumer compliance (i.e., ratings of "1" or "2"), as well as for the Community Reinvestment Act (CRA) (i.e., CRA ratings of "Outstanding" or "Satisfactory").

Institutions rated less than satisfactory for consumer compliance (i.e., ratings of "3," "4," or "5") had overall compliance management system (CMS) weaknesses, which often resulted in violations of law and the risk of consumer harm. Institutions rated "needs to improve" or "substantial noncompliance" for CRA represent a weak performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

Most Frequently Cited Violations

During 2021, FDIC consumer compliance examiners identified regulatory violations that ranged in severity from highest to lowest level of concern (i.e., Levels 3, 2 and 1, with Level 1 representing the lowest level of concern).² This publication focuses on the five most frequently cited instances of Level 3 or Level 2 violations.

The most frequently cited violations (representing approximately 78 percent of the total violations cited in 2021) remain the same as 2020 and involve the Truth in Lending Act (TILA), Flood Disaster Protection Act (FDPA), Electronic Fund Transfers Act (EFTA), Truth in Savings Act (TISA), and the Real Estate Settlement Procedures Act (RESPA).

Because the FDIC conducts consumer compliance examinations using a risk-focused methodology, the most frequently cited violations generally involve regulations that represent the greatest potential for consumer harm. For example, TILA requires disclosures about mortgage costs and calculation errors could result in reimbursements to consumers. Moreover, the flood insurance provisions included in the FDPA could result in penalties if the supervised institution does not take appropriate steps to ensure compliance. Given the heightened risk for potential consumer harm, these five areas of the law generally represent a center of focus for consumer compliance examiners.

Of the top regulatory areas cited for violations, the following list describes the most frequently cited violation in each area:

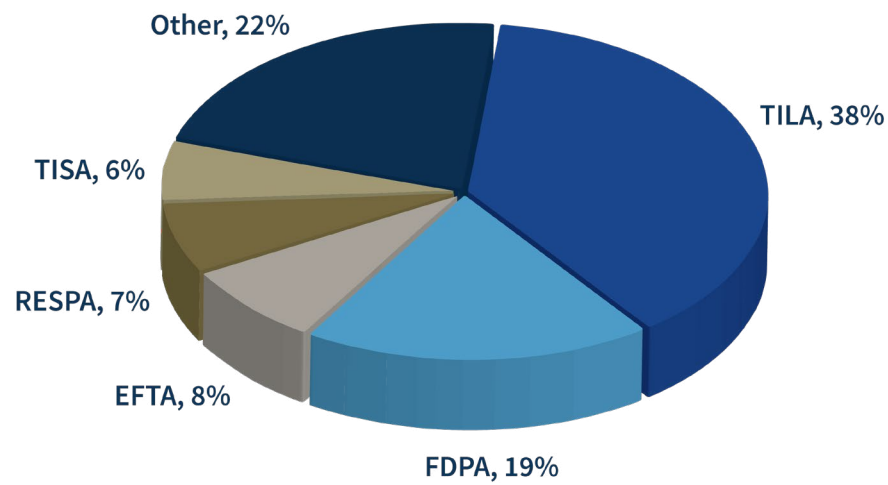
- **TILA:** Section 1026.19(e) of Regulation Z, which implements TILA, requires the lender to provide a loan estimate with the information required under section 1026.37. This section provides for timing requirements of the loan estimate and requirements for the disclosure of certain settlement providers. This section also includes requirements for pre-disclosure activity, the good faith determination for estimates of closing costs, and the provision and receipt of revised disclosure.
- **FDPA:** Section 339.3(a) of Part 339 of the FDIC Rules and Regulations, which implements the FDPA, requires adequate flood insurance be in place at the time a covered loan is made, increased, extended, or renewed.
- **EFTA:** Section 1005.11(c) of Regulation E, which implements the EFTA, requires a financial institution to investigate allegations of electronic fund transfer errors, determine whether an error occurred, report the results to the consumer, and correct the error within certain timeframes.
- **RESPA:** Section 1024.37(c) of Regulation X, which implements RESPA, prohibits a loan servicer from assessing the borrower any premium charge or fee related to force-placed hazard insurance until certain disclosure requirements have been met. The disclosures must comply with formatting requirements set forth in this section.
- **TISA:** Sections 1030.4(a) and (b) of Regulation DD, which implements TISA, set forth timing and content requirements for deposit account disclosures.

In 2021, the FDIC initiated 20 formal enforcement actions and 24 informal enforcement actions to address consumer compliance examination findings. During this period, the FDIC issued Civil Money Penalty (CMP) orders against institutions to address violations of the FDPA and Section 5 of the Federal Trade Commission Act (FTC Act)³, totaling \$2.7 million. Voluntary restitution payments to more than 49,000 consumers for violations of various laws and regulations totaled approximately \$4.5 million.

² See FDIC Consumer Compliance Examination Manual, [Section II-6.1 \(Communicating Findings\)](#).

³ Violations of Section 5 of the FTC Act prohibits unfair and deceptive acts or practices. While these violations are cited infrequently, they often give rise to formal or informal enforcement actions.

MOST FREQUENTLY CITED STATUTES AND REGULATIONS IN 2021						
Statute/Regulation	Level 3 Violations		Level 2 Violations		Total Violations ⁴	
	#	%	#	%	#	%
TILA	15	1%	573	37%	588	38%
FDPA	7	<1%	281	18%	288	19%
EFTA	2	<1%	126	8%	128	8%
RESPA	2	<1%	97	6%	99	7%
TISA	1	<1%	95	6%	96	6%
Total 5 Most Commonly Cited Statutes	27	2%	1172	76%	1199	78%
All Cited Statutes in 2021	36	2%	1504	98%	1540	100%



⁴ Level 1 violations are isolated or sporadic in nature or systemic violations that are unlikely to impact consumers or the underlying purposes of the regulation or statute. Thus, Level 1 violations are not included in this table.

Consumer Compliance Examination Observations

The following describes some of the more significant consumer compliance issues identified by FDIC examiners during the consumer compliance examinations conducted in 2021. The issues include matters involving liability protections, automated overdraft programs, re-presentation of unpaid transactions, and fair lending compliance.

Regulation E – Liability Protections for a Consumer Deceived into Giving Authorization Credentials

Background

Regulation E implements EFTA, which gives consumers certain rights when engaging in electronic fund transfers (EFTs). EFTs include transfers through automated teller machines, point of sale terminals, and automated clearinghouse systems. Regulation E outlines procedures financial institutions must follow for investigating and resolving EFT errors alleged by consumers. Regulation E limits consumer liability for unauthorized transfers that are reported within regulatory timeframes, and outlines procedures for resolving errors that are reported within regulatory timeframes.

Findings

In 2021, the FDIC noted issues involving consumers being targeted for fraud. In one instance, a third-party service provider (TPSP) managed a financial institution's deposit accounts. The consumers stated someone posing as a representative of the financial institution's fraud department contacted them seeking account verification codes. Believing they were communicating with the TPSP (working on behalf of the financial institution) about unauthorized activity, the consumers provided the two-factor authentication code, and it turned out the person to whom they gave the code was a scammer. The scammer then used the account credentials to steal money from the consumers' accounts.

In an attempt to limit its liability, the financial institution disclosed in the account agreements that neither the institution nor the TPSP would ever request the two-factor authentication code. However, the FDIC concluded that Regulation E's liability protections for unauthorized transfers apply even if a consumer is deceived into giving someone their authorization credentials. Consumer account disclosures cannot limit the protections provided for in the regulation.

The regulation's Official Interpretations expressly state that an unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery, and that consumer negligence cannot be used as the basis for imposing greater liability than is permitted under Regulation E. On June 4, 2021, the Consumer Financial Protection Bureau (CFPB) [Frequently Asked Questions](#) issued (FAQs) on Unauthorized Electronic Fund Transfers and Error Resolution under Regulation E. The FAQs reference issues involving fraudulent account access and explain that when a consumer is fraudulently induced into sharing account access information with a third party, and a third party uses that information to make an EFT from the consumer's account, the transfer is an unauthorized EFT under Regulation E. The FAQs further explain that consumer behavior that may constitute negligence under state law does not affect the consumer's liability for unauthorized transfers under Regulation E. Further, the FAQs indicate subsequent transfers initiated with the fraudulently obtained account information (the access code) would also be considered unauthorized transfers and subject to Regulation E liability protections.

The FDIC also noted instances where deceived consumers provided their account credentials for fraudulent EFTs conducted through a money payment platform (MPP) such as Cash App, Zelle, or Venmo. When an MPP

entered into an agreement with a consumer, that agreement extended to the financial institution holding the consumer's account. The financial institution, as the account holding institution, was held responsible under Regulation E. In addition, the MPP, through whose platform the EFT was made, was also held responsible, as it was considered a "financial institution" under Regulation E. Both the financial institution and MPP have investigative and error resolution obligations under Regulation E and must comply with those obligations provided the consumer gives timely notice of an alleged error under section 1005.11(b).

Regulation E also applies to peer-to-peer or "P2P" payments made through MPPs, even when the MPP has no specific agreement regarding the MPP with the financial institution holding the consumer's account, provided the transmitter issues an "access device" and agrees with the consumer to provide EFT services that enable the consumer to access the account. A consumer's mobile phone and an MPP EFT application fall under Regulation E's definition of "access device." Consequently, an MPP must comply with Regulation E for transactions connected to a consumer's debit card or account. Both the financial institution and MPP are obligated under Regulation E to investigate EFT disputes and to limit consumer liability if, after investigation, the consumer's allegations are confirmed.

Mitigating Risk

Through our examination and supervisory experience, we have observed that financial institutions, including MPPs, can take a number of steps to mitigate the risk of not complying with Regulation E. These include:

- Reviewing account agreements and disclosures (including those with MPPs) to ensure they do not attempt to diminish or limit consumers' rights under Regulation E.
- Conducting thorough investigations of any fraud-related EFT disputes and documenting the findings. Under section 1005.11(d)(1), consumers have a right to request the documents the financial institution relied upon in making its determination.
- Educating consumers about scams and providing tips on avoiding scams.
- Reminding consumers to notify their financial institution if they fall victim to a scam. Prompt notification (and financial institution response) can expedite the recovery of funds.
- Implementing effective fraud detection and prevention measures, such as monitoring geographic data, spending patterns, merchant data, and IP addresses, to help detect potential fraudulent activity.⁵
- Training staff on Regulation E's requirements and assisting consumers alleging unauthorized transactions.

Automated Overdraft Programs: Conversion from Static Limit to Dynamic Limit

Background

Automated overdraft programs authorize or decline transactions presented against insufficient funds through a computerized process. The limits used by these automated overdraft programs are either static or dynamic.⁶ Static limits are typically determined at account opening and seldom change. Some institutions employ fixed amounts that may range from \$100 to over \$1,000 and vary based on the type of account, while others assign the same amount to all customers. Institutions may communicate the static overdraft limit to customers at account opening, in subsequent disclosures, or through other communications,

⁵ The [Red Flags Rule](#) requires many businesses and organizations to implement a written Identity Theft Prevention Program designed to detect the warning signs – or red flags – of identity theft in their day-to-day operations.

⁶ In 2013, the CFPB issued a publication "[CFPB Study of Overdraft Programs: A white paper of initial data findings](#)" a publication that explains how automated overdraft programs work and how institutions generally set overdraft coverage limits.

including online or mobile banking systems. Dynamic limits, in contrast, vary for each customer and may change periodically (e.g., daily, weekly, monthly) as a customer's usage or relationship with the institution changes. For instance, a customer's assigned overdraft limit may be \$500 one day and reduced to zero (i.e., no assigned overdraft limit) a few days later. The dynamic limits are typically based on algorithms, or a set of rules, that weigh numerous variables and customer behaviors in an attempt to manage risk. For example, some common variables used to calculate the dynamic limit might include the age of the account, average balance, overdraft history, deposit amounts, deposit frequency, and other relationships the customer may have with the institution. Financial institutions will periodically evaluate and adjust the algorithms based on changes in policy, market conditions, customer behavior, and other factors. Institutions that use dynamic limits do not always communicate these limits to customers.

Overdraft programs must comply with all applicable Federal law and regulations, including Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. An act or practice is deceptive if, in general, it is a representation, omission, or practice that is likely to mislead a consumer acting reasonably under the circumstances, and the representation, omission, or practice is material.

Findings

FDIC consumer compliance examinations conducted during 2021 identified several financial institutions that converted their programs from a static limit to a dynamic limit. In some instances, examiners identified concerns with how these conversions were implemented and cited violations of Section 5 of the FTC Act for deceptive acts or practices. The institutions failed to disclose sufficient information about the change from a static limit to a dynamic limit. In fact, some institutions did not provide any information to customers about the change. Specifically, institutions failed to disclose key changes such as:

- Replacement of the fixed amount with an overdraft limit that may change and could change as frequently as daily.
- Use of a new overdraft limit that may be lower or higher, at times, than the fixed amount to which the customer had become accustomed.
- Suspension of the overdraft limit when it falls to zero and how such a change may result in transactions being returned unpaid to merchants/third parties due to insufficient funds.

The FDIC deemed the above omissions material. The financial institutions' disclosures omitted necessary information that customers needed to make an informed decision about how the new dynamic limit overdraft program operated. The customers did not have sufficient information about the new program to understand how to avoid fees associated with an overdraft or for transactions declined for payment. Changes in overdraft coverage without adequate disclosure resulted in consumer harm.

Mitigating Risk

The FDIC has observed certain risk-mitigating activities institutions may consider to mitigate the risk when implementing automated overdraft programs with a dynamic limit. These include:

- Providing clear and conspicuous information to existing customers so they have advance notice of how the change from a fixed overdraft limit to a dynamic limit will affect them. This is especially important when the bank previously disclosed the amount of the fixed overdraft limit to customers.

- Disclosing changes to overdraft limits in real time to consumers, as these vary, with the opportunity for consumers to adjust their behavior.
- Reviewing and revising account opening disclosures or other communications used to inform new customers about the automated overdraft program to avoid engaging in deceptive practices.
- Explaining that the dynamic limit is established based on algorithms, or a set of rules, that weigh numerous variables and customer behaviors, how the limit may change (including the frequency of change), and how the limit may be suspended or reduced to zero when eligibility criteria are no longer met.
- Training customer service and complaint processing staff to explain the features and terms of the automated overdraft program's dynamic features. This training should be provided to staff who work with new customers as well as those who work with existing customers.

Re-presentation of Unpaid Transactions: Heightened Risk for Section 5 Violations

Background

Financial institutions commonly charge a non-sufficient funds (NSF) fee when a charge is presented for payment but cannot be covered by the balance in the account. Some financial institutions charged additional NSF fees for the same transaction when a merchant re-presented an automated clearinghouse (ACH) payment or check on more than one occasion after the transaction was declined. Disclosure and fee practices for re-presentments may result in heightened risk of violations of Section 5 of the FTC Act, which covers both business and consumer accounts. Re-presentation practices have recently been spotlighted in public statements by other Federal and state regulators, and announcements by financial institutions including those regulated by the FDIC. Re-presented transactions have also been the subject of a number of recent class action lawsuits involving financial institutions, including some supervised by the FDIC. These lawsuits generally allege breach of contract due to the omission of key terms related to the assessment of representation fees. Lawsuit settlements have resulted in customer restitution and legal fee reimbursements.

Findings

During 2021, the FDIC identified consumer harm when financial institutions charged multiple NSF fees for the re-presentation of unpaid transactions. Some disclosures and account agreements explained that one NSF fee would be charged "per item" or "per transaction." These terms were not clearly defined and disclosure forms did not explain that the same transaction might result in multiple NSF fees if re-presented.

While case-specific facts would determine whether a practice is in violation of a law or regulation, the failure to disclose material information to customers about re-presentation practices and fees may be deceptive. This practice may also be unfair if there is the likelihood of substantial injury for customers, if the injury is not reasonably avoidable, and if there is no countervailing benefit to customers or competition. For example, there is risk of unfairness if multiple fees are assessed for the same transaction in a short period of time without sufficient notice or opportunity for consumers to bring their account to a positive balance.

Additionally, although class action settlements may result in banks providing some restitution to its customers, the FDIC has determined that, in some instances, the restitution provided did not fully redress the harm caused by the practice. As such, the FDIC required such institution to provide additional restitution.

Mitigating Risk

The FDIC has observed various risk-mitigating activities that financial institutions have taken to reduce potential risk of consumer harm and avoid potential violations of Section 5 of the FTC Act. These include:

- Eliminating NSF fees.
- Declining to charge more than one NSF fee for the same transaction, regardless of whether the item is represented.
- Disclosing the amount of NSF fees and how such fees will be imposed, including:
 - Information on whether multiple fees may be assessed in connection with a single transaction;
 - The frequency with which such fees can be assessed; and
 - The maximum number of fees that can be assessed in connection with a single transaction.
- Reviewing customer notification practices related to NSF transactions and the timing of fees to provide the customer with an ability to avoid multiple fees for re-presented items.
- Conducting a comprehensive review of policies, practices, and disclosures related to re-presentments to ensure the manner in which NSF fees are charged is communicated clearly and consistently.
- Working with service providers to retain comprehensive records so that re-presented items can be identified.

Fair Lending

Background

The FDIC conducts a fair lending review as part of every consumer compliance examination. The fair lending review evaluates a supervised institution's compliance with the anti-discrimination laws and regulations, including the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). While the vast majority of supervised institutions maintain effective compliance programs, the FDIC does occasionally identify violations. In the rare instance when the FDIC has reason to believe a creditor is engaged in a pattern or practice of discrimination in violation of ECOA, the FDIC is required, by law, to refer the matter to the Department of Justice (DOJ). In 2021, the FDIC referred two fair lending matters to the DOJ.

Findings

For one fair lending matter referred to the DOJ in 2021, the institution had a policy of using the Cohort Default Rate (CDR) to determine who could apply for private student loan debt consolidation and refinance loans. In general, the CDR is published by the U.S. Department of Education to show the percentage of a school's borrowers who default on certain loans. In addition to other criteria, the institution used the CDR as an eligibility threshold to determine which students could apply for credit. In general, the CDR cutoffs resulted in the disproportionate exclusion of people who attended Historically Black Colleges and Universities (HBCUs) from applying for credit, as certain HBCUs had CDRs that exceeded the cutoff chosen by the institution. While the institution's use of the CDR to determine school-specific eligibility requirements constituted a neutral policy, the policy had a disparate impact on the prohibited basis of race, given that the graduates of HBCUs were disproportionately Black.

For the other fair lending matter referred to the DOJ in 2021, the FDIC concluded there was reason to believe that an institution engaged in a pattern or practice of illegal credit discrimination on the prohibited basis of race by redlining in certain markets in the institution's lending area. Specifically, the FDIC evaluated the institution's reported Home Mortgage Disclosure Act data and lending activity in majority-Black census tracts. The FDIC also analyzed the institution's branching, as well as its marketing and outreach in those areas. As a result, the FDIC concluded that the institution was not making credit available to certain geographic areas based on the racial composition of those areas.

Mitigating Risks

A strong compliance management system helps ensure financial institutions treat consumers fairly by operating in compliance with fair lending laws. The [FDIC's Banker Resource Center](#) provides information to help [support fair lending compliance](#). In addition, banks may consider the following to mitigate fair lending risks:

- Maintaining written policies and procedures that include information for lending staff to reference when applying credit decision criteria and determining whether borrowers are creditworthy.
- Reviewing any requirements or other criteria used to screen potential applicants to ensure there is no discriminatory impact.
- Understanding the bank's reasonably expected market area, and the demographics of the geographies within that area.
- Evaluating the methods by which the bank obtains loan applications, including any marketing or outreach efforts and branches.
- Assessing the bank's lending performance within its reasonably expected market area.

Regulatory and Other Developments

The following provides information on matters relevant to consumer compliance laws and regulations that were issued or finalized in 2021 or scheduled to become effective in 2022. Additionally, this section includes information on efforts to modernize CRA.

Community Reinvestment Act Rulemaking

On July 20, 2021, [the FDIC announced](#) its commitment to working with the Board of Governors of the Federal Reserve System (Federal Reserve Board) and the Office of the Comptroller of the Currency (OCC) to jointly strengthen and modernize the regulations implementing the CRA. Since this announcement, the agencies have continued to work together to develop a joint notice of proposed rulemaking building on the Federal Reserve Board's September 2020 Advance Notice of Proposed Rulemaking. The FDIC is committed to working toward a uniform application of the CRA framework to ensure banks meet the credit needs of their communities while clarifying the types of activities for which banks can obtain credit under the CRA, the locations for which banks can obtain such credit, and the amount of credit banks will receive.

Conducting Due Diligence on Financial Technology Companies

On August 27, 2021, the FDIC, the Federal Reserve Board, and the OCC issued the [Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks](#) (Guide), which is intended to help community banks conduct due diligence when considering relationships with financial technology (fintech) companies. While the Guide is written from a community bank perspective, the fundamental concepts may be useful for banks of varying sizes and for other third-party relationships. Community banks can tailor how to use the Guide depending on their specific circumstances, the risks posed by each third-party relationship, and the related product, service, or activity offered by the fintech company.

The Guide focuses on six key due diligence topics, including relevant considerations, potential sources of information and illustrative examples. Banks should consider, as appropriate, other risk factors, considerations, and sources of information, depending on the unique relationship and the role of the fintech company. Use of the Guide is voluntary and does not anticipate every type of third-party relationship and risk.

Financial Institutions' Use of Artificial Intelligence, including Machine Learning

On March 29, 2021, the FDIC, the Federal Reserve Board, the OCC, the CFPB, and the National Credit Union Administration (the agencies) issued a Request for Information (FDIC Financial Institution Letter ([FIL](#)) [20-2021](#)) seeking information and comments on the use of artificial intelligence (AI), including machine learning, by financial institutions. The agencies support responsible innovation by financial institutions and recognize AI has the potential to offer improved efficiency, enhanced performance, and cost reduction for financial institutions, as well as benefits to consumers and businesses. Likewise, as with any activity or process in which a bank engages, identifying and managing risks are key. The request sought information on financial institutions' risk management practices related to the use of AI; challenges facing financial institutions when developing, adopting, and managing AI and its risks; and benefits to financial institutions and their customers from the use of AI. The request also sought views on the use of AI in financial services, which will help the agencies determine whether any clarification would be helpful for financial institutions'

use of AI in a safe and sound manner and in compliance with applicable laws and regulations, including those related to consumer protection. The comment period ended on July 1, 2021, and the agencies are considering the comments received. Refer to FDIC FIL-20-2021 for additional details.

Proposed Interagency Guidance on Third-Party Relationships: Risk Management

On July 13, 2021, [FIL-50-2021](#) announced that the FDIC, along with other Federal banking agencies, sought comment on proposed guidance on managing risks associated with third-party relationships. The proposed guidance offers a framework of sound risk management principles to assist banking organizations in managing third-party relationships, and promotes compliance with all applicable laws and regulations, including those related to consumer protection. The proposed guidance takes into account the level of risk, complexity, and size of the banking organization and the nature of the third-party relationship. If finalized, the proposed guidance would replace each agency's existing guidance on this topic. A copy of the proposed guidance is on [the FDIC's website](#). The comment period ended on October 18, 2021, and the agencies are considering the comments received.

Rule on the Role of Supervisory Guidance

On January 19, 2021, the FDIC issued [FIL 03-2021](#) to announce that the FDIC Board of Directors adopted a final rule to clarify and codify the role of supervisory guidance. The FDIC, OCC, the Federal Reserve Board, CFPB, and the National Credit Union Administration had previously published a joint proposed rule to codify the Interagency Statement on the Role of Supervisory Guidance ([FIL-49-2018](#)), with clarifying changes, as an appendix to proposed rule text. On January 19, 2021, the FDIC adopted the proposed rule without substantive change. In general, the final rule reiterates the distinction between regulation and supervisory guidance and clarifies the FDIC's policies and practices to:

- Limit the use of numerical thresholds in guidance;
- Reiterate that examiners will not base supervisory criticisms on a "violation" of or "non-compliance" with supervisory guidance;
- Reduce the issuance of multiple supervisory guidance on the same topic;
- Make the role of supervisory guidance clear in communications to examiners and supervised financial institutions; and
- Encourage supervised institutions to discuss questions about supervisory guidance with their appropriate agency contact.

National Flood Insurance Program – Risk Rating 2.0

On October 1, 2021, the Federal Emergency Management Agency (FEMA) began implementing its new pricing methodology, called [Risk Rating 2.0](#), to calculate flood insurance premiums. This new methodology moves away from a reliance on flood zone mapping to leverage industry best practices and technology, thus enabling FEMA to deliver rates that are actuarially sound, equitable, easier to understand, and more reflective of a property's flood risk. Risk Rating 2.0 does not affect the mandatory purchase requirements.

FEMA is implementing Risk Rating 2.0 in two phases: 1) as of October 1, 2021, new policies are subject to the new methodology; and 2) all the remaining policies renewing on or after April 1, 2022, will be subject to the new rating methodology.

Although flood zones on a Flood Insurance Rate Map (FIRM) will not be used to calculate a property's flood insurance premium, flood zones will still be used for floodplain management purposes (i.e., all new construction and substantial improvements to buildings in Zone V must be elevated on pilings, posts, piers, or columns). Further, lenders will continue to use FIRMs to determine if a building is located within a special flood hazard area (SFHA) and must continue to complete the Standard Flood Hazard Determination (SFHD) form for each covered loan as required by 12 C.F.R. 339.6(a). If a building securing a covered loan is located in an SFHA, the lender must require the borrower to obtain the appropriate amount of flood insurance coverage in accordance with the mandatory purchase requirements as defined under 42 U.S.C. § 4012a(b), as implemented by 12 C.F.R. 339.3(a).

If there is a discrepancy regarding whether a property is located in a SFHA, the borrower may use FEMA's Letter of Map Amendment process to review the determination. Pricing for flood insurance policies issued by a private flood insurer and National Flood Insurance Program (NFIP) policies that have not yet been issued under Risk Rating 2.0 may still include the flood zone on a declarations page. In these cases, lenders need not reconcile a flood zone discrepancy.

Notice of Proposed Rulemaking on False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

The FDIC observed an increasing number of instances where financial service providers or other entities or individuals misused the FDIC's name or logo, or made false or misleading representations that would suggest to the public that these providers' products are FDIC-insured.

On May 10, 2021, the FDIC issued [a notice of proposed rulemaking](#) under its statutory authority under the Federal Deposit Insurance Act section 18(a)(4), which prohibits any person from making false or misleading representations about deposit insurance or misusing the FDIC's name or logo. The proposed rule would establish a more transparent process that will promote stability and public confidence in FDIC deposit insurance and the nation's financial system. Specifically, the proposed rule would describe the: (1) process by which the FDIC will identify and investigate conduct that may violate section 18(a)(4); (2) standards under which such conduct will be evaluated; and (3) procedures which the FDIC will follow when formally and informally enforcing section 18(a)(4). The comment period ended on July 9, 2021, and the FDIC is reviewing the comments received and expects to issue the final rule in 2022. Separately, on April 9, 2021, the FDIC re-issued a request for information (RFI) regarding the FDIC Sign and Official Advertising Requirements, which overlaps to a degree with this proposed rule. For example, the RFI asks about how to deal with parties that may be fraudulently impersonating insured depository institutions, which necessarily relates to the proposed rule.

Simplification of Deposit Insurance Rules for Trust and Mortgage Servicing Accounts

On July 20, 2021, the FDIC [published a proposed rule](#) to amend the deposit insurance regulations for trust accounts and mortgage servicing accounts. The [final rule](#), issued on January 21, 2022, is intended to make the deposit insurance rules easier to understand for depositors and bankers, facilitate more timely insurance determinations for trust accounts in the event of a bank failure, and enhance consistency of insurance

coverage for mortgage servicing account deposits. Under the final rule, the revocable and irrevocable trust deposit insurance categories are merged into a new “trust accounts” category. In addition, the rule establishes a simpler, common formula for calculating coverage for both revocable and irrevocable trusts. Furthermore, under the final rule, an owner’s trust deposits would be insured in an amount up to \$250,000 for each of the trust beneficiaries, not to exceed five, regardless of whether a trust is revocable or irrevocable; this would provide for a maximum amount of deposit insurance coverage of \$1,250,000 for trust deposits, per owner, per insured depository institution. Finally, mortgage servicers’ advances of principal and interest funds on behalf of mortgagors in a mortgage servicing account would be insured up to \$250,000 per mortgagor, consistent with the coverage for payments of principal and interest collected directly from mortgagors. The rule will take effect on April 1, 2024.

Transitioning from the London Interbank Offered Rate (LIBOR)

On December 7, 2021, the CFPB [finalized a rule facilitating the transition away from the LIBOR interest rate index for consumer financial products](#). The rule establishes requirements for how creditors must select replacement indices for existing LIBOR-linked loans after April 1, 2022. No new financial contracts may reference LIBOR as the relevant index after the end of 2021. Starting in June 2023, LIBOR can no longer be used for existing financial contracts.

Effective April 1, 2022, the final rule includes closed-end credit provisions that require creditors to choose an index comparable to LIBOR when changing the index of a variable rate loan, or consider it a refinancing for purposes of Regulation Z. For open-end loans, the rule adds LIBOR-specific provisions to permit creditors or card issuers for home equity lines of credit (HELOC) and credit card accounts to replace the LIBOR index and adjust the margin used to set a variable rate on or after April 1, 2022, if certain conditions are met. The rule also finalizes change-in-terms notice requirements proposed by the CFPB for disclosing margin reductions for HELOCs and credit card accounts when LIBOR is replaced. These disclosure requirements are effective April 1, 2022, with a mandatory compliance date of October 1, 2022. The rule also amends Regulation Z to address how to re-evaluate rate increases on credit card accounts when transitioning from using a LIBOR index to a replacement index.

In addition, on July 29, 2021, the FDIC issued [FIL-54-2021](#) to provide answers to FAQs about the impact of LIBOR transitions on regulatory capital instruments. Among other things, the FAQs address the issue of changing a reference rate from LIBOR to an alternative rate and clarify that such a transition would not change the capital treatment of the instrument, provided the alternative rate is economically equivalent with the LIBOR-based rate. The FAQs can be found on [the FDIC’s website](#).

FDIC Risk Assessments Relating to the CARES Act and Mortgage Servicing

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law to provide relief to those who are impacted by the COVID-19 emergency. The CARES Act includes various provisions that affect financial institutions and their customers. In addition to CARES Act-mandated forbearance, mortgage servicers offered debt relief options to borrowers facing hardships related to the COVID-19 pandemic. In 2020, the FDIC conducted targeted risk assessments of certain financial institutions to assess any challenges, issues, or concerns related to the CARES Act, and to determine the extent to which the institutions implemented relevant CARES Act provisions. Although there were challenges with the high

volume of COVID-19-related mortgage requests and questions from customers, as well as internal efforts to maintain a healthy workforce, the FDIC found supervised institutions had compliance management systems that identified, mitigated, and responded to consumer compliance risks in the institution's operations, and associated products and services.

In 2021, the FDIC conducted follow-up risk assessments of FDIC-supervised institutions with significant mortgage servicing portfolios. This included institutions that participated in the 2020 risk assessment, as well as others with significant mortgage servicing portfolios. Overall, the FDIC's 2021 risk assessments found supervised institutions reported relatively low volumes of loans in forbearance, particularly when compared to the total volume of loans in forbearance at the peak of the pandemic, and to total loans serviced. The institutions also reported they do not anticipate elevated levels of borrowers seeking additional debt relief assistance. The institutions noted they had adjusted resources and implemented programs, processes, and monitoring throughout the pandemic that have allowed for successful management of forbearance plans and all loss mitigation efforts. Though COVID-19 presented serious challenges, supervised institutions created or revised policies and procedures, provided ongoing training, and exhibited effective oversight to support compliance with the CARES Act and mortgage servicing rules.

Resources for Financial Institutions

The FDIC provides resources for financial institutions to support their efforts to serve and meet the needs of their communities. In addition, these resources may provide information that can help institutions stay current with regulatory developments and provide guidance on consumer compliance topics.

Banker Resource Center

The [FDIC's Banker Resource Center](#) provides supervisory resources for banking professionals. The site includes links to applicable laws and regulations, frequently asked questions, archived webcasts and teleconferences, statements of policy, and other information issued either on an interagency basis or individually by the FDIC. It also contains links to published materials from other agencies.

On December 23, 2021, the FDIC released five mortgage-servicing videos for the [Technical Assistance Video Program](#). The videos provide a high-level overview to help FDIC-supervised institutions understand and comply with the mortgage servicing rules. The first video provides an overview of mortgage servicing and describes how to determine whether a servicer meets the definition of a small servicer under Regulation Z. The second video discusses key provisions for which small servicers do not have an exception. These are the provisions with which all servicers, small and large, must comply. The third video provides an overview of some of the requirements from which small servicers are exempt. The fourth video discusses successors in interest, including the definition of successor in interest and a general overview of what to be aware of when working with successors in interest. Finally, the fifth video provides information and examples related to developing a compliance management system that considers the mortgage servicing rules. The videos range in duration from around 8 to 27 minutes.

On February 23, 2021, the FDIC released [nine technical assistance videos on fair lending](#). These videos provide a high-level overview to help FDIC-supervised institutions understand how FDIC examiners evaluate fair lending compliance and provide information to institutions on assessing and mitigating different types of fair lending risks. The first video provides an overview of the Federal fair lending laws and regulations. The second video focuses on how a bank's CMS can mitigate fair lending risk. The third video discusses the FDIC's fair lending examination approach. The remaining six videos provide overviews of overt discrimination, as well as risks relating to underwriting, pricing, steering, redlining, and marketing. The videos range in length from approximately 10 to 28 minutes.

An Overview of Consumer Complaint Trends

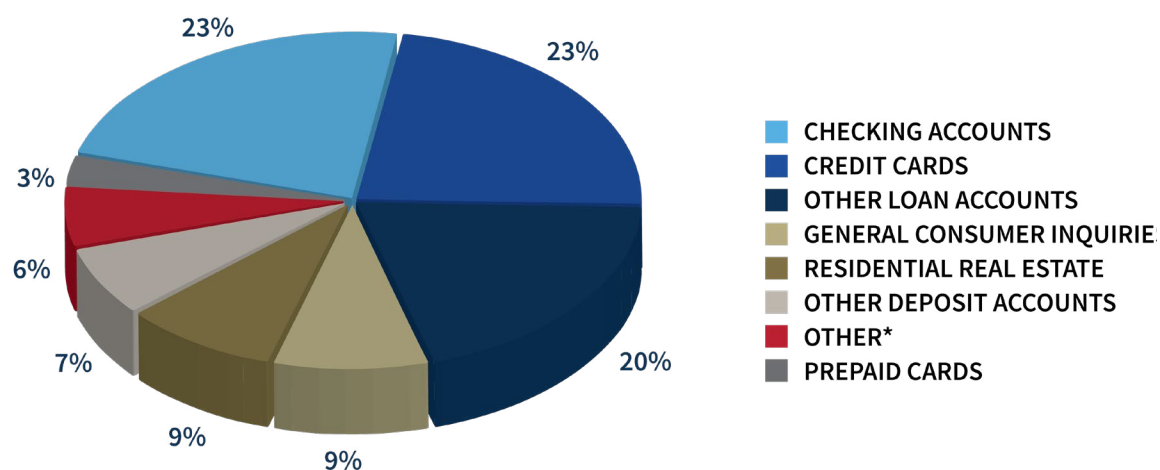
The National Center for Consumer and Depositor Assistance's (NCDA) Consumer Response Unit (CRU) closed and responded to 17,714 written complaints and telephone calls from consumers in 2021, which represents a 16 percent increase from the 15,217 case records in 2020. The CRU closed and responded to 14,236 written consumer complaints in 2021 by investigating the complaint or referring the complaint to the appropriate FDIC division/office or other agency. The CRU acknowledged 100 percent of written complaints within 14 days and investigated and responded to 99 percent of non-fair lending complaints within established timeframes.

Of the 14,236 written complaints, the CRU investigated 8,529 of the written complaints or inquiries. The completed investigations of the noted products, issues, and applicable regulations found 429 apparent bank errors and 201 apparent violations. Fair Lending complaints investigated by the CRU increased from 48 in 2020 to 63 in 2021, a 31 percent increase.

The volume of third-party providers (TPPs) associated with complaints increased to 4,100 from 3,298, or 24 percent. These relationships generally involve contractual agreements between banks and entities that perform a variety of services, such as credit card servicing and processing deposit account transactions and error disputes. The CRU tagged a case involving a TPP in 3,846 instances. TPPs were associated with 97 cases reflecting an apparent violation of a federal consumer protection regulation.

The CRU's interaction with consumers and banks resulted in consumers receiving \$1,292,695 in total voluntary restitution and compensation through December 2021, compared to \$949,925 received for the same period in 2020, a 36 percent increase. In addition to monetary compensation, the CRU's interaction also resulted in 871 cases reflecting non-monetary compensation. The types of non-monetary compensation provided included: updating bank records, reinstating an account or releasing a block on a card, ceasing collection calls or actions, loan modifications, and forgiving debt.

The CRU coded each complaint within the Enterprise Public Inquiries and Complaints (EPIC) system with at least one product, issue, regulation, and finding. In 2021, the CRU determined the top five products to include: *checking accounts* (3,160), *credit cards* (3,032), *installment loans* (1,169), *residential real estate* (1,029), and *consumer line of credit* (950). The following chart provides the breakdown of the top products in 2021.



*Other represents topics such as bank operations and scams.

The following table provides a five-year analysis of the top products and the associated top issues for those products.

MOST COMMON PRODUCT COMPLAINTS REVIEWED BY THE CRU IN 2021	% OF PRODUCTS COMPARED TO TOTAL VOLUME					MOST COMMON ISSUES (2021) (% OF PRODUCT TOTALS)
	2017	2018	2019	2020	2021	
Checking Accounts	17%	23%	29%	25%	23%	<ol style="list-style-type: none"> 1. Error Resolution (25%) 2. Customer Identification Policy (15%) 3. Account Closure (15%)
Credit Cards	16%	17%	20%	18%	23%	<ol style="list-style-type: none"> 1. Credit Reporting Errors (35%) 2. Loan Forgery/ID Theft (13%) 3. Billing Disputes (8%)
Residential Real Estate	15%	14%	10%	8%	9%	<ol style="list-style-type: none"> 1. Disclosures (12%) 2. Credit Reporting Errors (10%) 3. Loan Modification (8%)
Installment Loans	9%	8%	9%	7%	9%	<ol style="list-style-type: none"> 1. Credit Reporting Errors (30%) 2. Disclosures (13%) 3. Loan Forgery/ID Theft (8%)
Lines of Credit	11%	11%	8%	7%	7%	<ol style="list-style-type: none"> 1. Credit Reporting Errors (45%) 2. Loan Forgery/ID Theft (15%) 3. Collection Practices (10%)

While *checking account* complaints remained the top product in 2021, it is reflecting a decrease since it peaked in 2019. The CRU will monitor this decrease to see if the availability of alternative banking products may be responsible for the decline. The issue *customer identification policy* increased to 416 complaints in 2021, or 120 percent. Complaints regarding this issue involve concerns a bank has blocked or closed an account until the consumer provides the requested identification documents.

Credit card complaints increased to 3,302, or 55 percent after decreasing in 2020. Complaints regarding *credit reporting error* involve concerns regarding the reporting of inaccurate information and fraudulent accounts. *Loan forgery/ID theft* concerns increased 629 percent through December 31, 2021. The CRU has noted an increase of *loan forgery/ID theft* concerns for several loan products in 2021.

Residential real estate complaints increased slightly in 2021. In 2022, the CRU will be watching to see if it receives an increase in complaints regarding COVID-19 forbearance exit plans as banks servicing Fannie Mae loans must follow Fannie Mae guidance.

The CRU also associated 13,409 issues with products. The top 15 issues of 2021 are noted below:

MOST COMMON ISSUES IN CONSUMER COMPLAINTS AND INQUIRES ABOUT FDIC SUPERVISED INSTITUTIONS

Credit Reporting Disputes	16%
Unable to Provide Requested Service*	7%
Disclosures	7%
Loan Forgery/ID Theft	5%
Error Resolution Procedures	5%
Customer Identification Policy	5%
Account Closures	4%
Deposit Transaction Error	4%
Debt Collection Practices	3%
Fees and Finance Charges (Loans)	3%
Billing Disputes	3%
Account Block	2%
Loan Discrepancies/Crediting of Payments	2%
Fees and Service Charges (Deposits)	2%
Funds Availability/Hold Notifications	2%

*Includes service disruption issues and other service-related concerns when customers cannot immediately access their accounts.

Two top issues reflect connections with three other top issues. *Credit reporting* remains the top issue in 2021, with a 59 percent increase from 2020. Four products comprise 96 percent of the credit reporting concerns: *credit cards*, *consumer line of credit*, *installment loans*, and *residential real estate*. Of the complaints noting *credit reporting error* concerns, approximately a third of the complaints also reflected *loan forgery/ID theft* concerns. Overall, *loan forgery/ID theft* concerns increased 423 percent in 2021. Three products reflected 94 percent of the concerns: *credit cards*, *consumer line of credit*, and *installment loans*. In most instances, consumers voiced concerns that accounts were established in their name without their permission

Concerns regarding customer identification policy increased by 87 percent through December 31, 2021. The CRU did not start tracking this issue until 2019. The products checking accounts and prepaid cards comprised 70 percent of this issue. Of the complaints noting customer identification policy concerns, several also noted concerns about the bank either blocking or closing their account.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Challenges Pendleton Community Bank's Overdraft Fee Practices](#)
