High Cost & Hidden From View:
The $10 Billion Overdraft Loan Market

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This report quantifies the fees that people with checking accounts are now paying for high-cost, short-term overdraft loans. Many people are finding themselves with overdraft loans they never asked for, do not want, and cannot afford. Federal regulators have failed to protect these customers.

The Center for Responsible Lending finds that borrowers are paying more than $10 billion per year for fee-based overdraft loans.

CRL calls for federal regulators to investigate and curb abuses in the overdraft loan market. Specifically, CRL believes that regulators should mandate disclosure of effective interest rates for overdraft loans, require affirmative consent of borrowers prior to the levying of overdraft loan charges, require adequate warnings when ATM and debit transactions will trigger a fee, require institutions to report data on their overdraft loan programs to the public, and prohibit multiple overdraft loans within a quarter.

OVERDRAFT LOANS: A FAR CRY FROM "PROTECTION"

Traditionally, depository institutions have selectively covered checks that exceed account balances as an occasional ad hoc courtesy to depositors. Today's programs, however, bear little resemblance to these traditional practices. Historically, if a customer wanted a formal program to protect against overdrafts and could qualify for it, the financial institution provided either a line of credit or a linked account. For a customer who did not qualify for such programs but demonstrated a pattern of overdrawing a checking account, the financial institution typically counseled the customer that future overdrafts could not be honored, and/or closed the customer's account. Fee-based overdraft loan programs, in contrast, are not designed to help customers manage their finances. **Instead, the programs are designed to increase the number of overdrafts and increase institutions' fee income.**

Institutions that operate fee-based overdraft loan programs extend credit by paying customers' checks, debit card transactions, or ATM withdrawals when customers have insufficient funds in their accounts. The institution pays the amount of the overdraft, often without the consent of the customer, and charges the customer a fee that ranges from $20 to $35. When the customer is overdrawing her account through an ATM withdrawal or debit purchase, generally the institution will neither notify the customer of this fact nor give her the option to cancel the transaction. When the customer's next deposit is made to her account, the institution debits the amount of the overdraft, plus the fee.

As a result of the high fees and short repayment time, borrowers pay triple- and even quadruple-digit interest rates. For example, if the overdraft loan fee was calculated as an APR, a $22.50 fee for an $80 overdraft loan translates into a 1,467% APR for a loan paid back in a week and a 733% APR if the loan is repaid in two weeks.

An institution has a fee-based overdraft loan program (as opposed to a policy of paying a customer's overdrafts on an occasional ad hoc basis) if it does any of the following: 1) pays overdrafts for more than one incident per quarter;[1] 2) knowingly allows overdrafts through ATMs, debit cards, or other non-check withdrawals; 3) advertises the existence of an overdraft program; or 4) communicates to the customer that she has a monetary limit to any overdraft coverage. Programs that provide contractually guaranteed protection to customers, such as links to lines of credit, are not overdraft loan programs for purposes of this paper.

A Borrower's Experience

A few days before Christmas 2004, Mr. Morgan used his bank check card to make a small purchase at a grocery store. He didn't realize that his checking account balance was too low to cover the debit. When his check card was accepted, he assumed that he had sufficient funds in his account. Over the course of the next three days, Mr. Morgan used his check card for a number of purchases. For each transaction, his bank charged a $30 fee—but the bank did not tell him that his account had a negative balance.

When Mr. Morgan reached the $600 limit of his bank's overdraft loan program, his debit card transactions were finally declined. By that point, Mr. Morgan had racked up $300 in overdraft fees for $239 in purchases. When he contacted the bank, he was told that the bank had paid the overdrafts as a courtesy. Mr. Morgan had never signed up for an overdraft loan program and was angry that he'd been charged $300 for a "service" he didn't want.

Overdraft loans are a form of short-term, high-cost credit, and the product is rife with abuses. Major problems with the overdraft loan industry include the following:

- The Federal Reserve has permitted institutions making overdraft loans to evade Truth In Lending Act (TILA) coverage.[2] TILA would provide basic information to consumers about the cost of loans, as well as other consumer protections.

- Borrowers can be enrolled in an overdraft loan program without their affirmative consent.

- Borrowers can take out overdraft loans at an ATM or through debit card transactions without receiving warnings that they are overdrawing their accounts and being charged fees for doing so.

- Most overdraft loan programs reserve the right to refuse to pay an overdraft, and therefore do not provide borrowers with guaranteed protection.

- Borrowers who repeatedly take out overdraft loans each month are using overdraft loans to meet recurring credit needs and pay high fees to roll over their debt. Borrowers' account balances therefore decrease, leaving them more dependent on future overdraft loans to meet expenses. The loan fees snowball, trapping borrowers in debt.

THE OVERDRAFT LOAN MARKET: LARGE AND GROWING

Industry estimates suggest that borrowers pay more than $10 billion in overdraft loan fees per year.

Measuring the effect of overdraft lending on American families has proven challenging because financial institutions do not publicly report overdraft fees separately from other fees. They are required to report overdraft fees as a part of service charge income, which includes ATM fees, NSF (not sufficient funds) fees,[3] and credit card fees.

Therefore, when discussing the size of the overdraft market, industry analysts estimate the share of service charge income attributable to NSF and overdraft loan fees. Some of these analysts have access to information from financial institutions that is not publicly available.

Industry estimates suggest that borrowers pay more than $10 billion in overdraft loan fees per year. In this section, we describe CRL's method for generating its $10 billion estimate. (See Table 1.)

Table 1. CRL's estimate of overdraft (OD) loan fees paid in 2004

Service charge income	$38 billion
Estimated % of service charge fees attributable to OD/NSF fees	45%
Estimated OD/NSF fees	$17.1 billion
Estimated percent of OD/NSF fees due to OD only	60%
Estimated overdraft fees	**$10.3 billion**

Total service charge income

Service charge income was based on Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA) data. According to these regulators, financial institutions received $38 billion in service charge income in 2004.[4]

To determine the other data points in Table 1, CRL reviewed estimates of market size made by four industry analysts: Bretton Woods, Moebs Services, Sheshunoff Management Services, and Sanford Bernstein.[5]

Percentage of service charge income comprised of overdraft and not sufficient funds fees

The estimates for the combined NSF and overdraft loan fees per year as a percentage of service charge income range from 38% to 70%. From that range, CRL arrives at our estimation that 45% of all financial institution service charge income is attributable to overdraft loan and NSF fees.

Table 2. Estimates of overdraft/NSF fees as a percentage of service charge income[6]

Analyst	% Service Charges Attributable to OD/NSF Fees
Bernstein	38-44%[7]
Bretton Woods	49%[8]
Sheshunoff	70%[9]
Avg. of Analysts' Estimates	52%*
CRL Estimate	**45%**

*Bernstein's lower estimate of 38% was used for computing the average.

Table 3. Estimate of the amount of overdraft and NSF Fees paid

Analyst	Estimated OD/ NSF Fees ($B)
Moebs Services	$33 (2003)[10]
Sheshunoff	$22 (2003)[11]
Bernstein	$12-14 (2004)[12]
Bretton Woods	$16 (2003)[13]
Avg. of Analysts' Estimates	$21*
CRL Estimate	**$17 (2004)**

*Bernstein's lower estimate of $12 billion was used for computing the average.

Table 4. Overdraft loan fees as a percentage of overdraft and NSF fees combined[14]

Analyst	% OD/NSF Fees Due Only to Overdraft
Bernstein	67%[15]
Bretton Woods	>50%[16]
Avg. of Analysts' Estimates	59%*
CRL Estimate	**60%**

* This average uses the 50% number from Bretton Woods as a fixed estimate, although it was given as a minimum.

Conservatively assuming that 45% of all service charge income is attributable to overdraft and NSF fees means that the total amount of overdraft and NSF fees was 45% of $38 billion — or $17.1 billion. CRL's 45% estimate is below the average of the other analysts' percentage estimates. (See Table 2.) In addition, CRL's $17.1 billion estimate is comparable to industry estimates of overdraft and NSF fees paid in 2003 and 2004. (See Table 3.)

Percentage of total overdraft and NSF fees attributable to overdraft only

Analysts estimate that overdraft fees constitute 50% to 67% of overdraft and NSF fees combined. From that range, CRL arrives at our estimate that 60% of combined overdraft loan and NSF fees are attributable to overdraft loan fees alone. (See Table 4.)

As detailed in the appendix, these fee breakouts suggest that the current amount of overdraft loan fees could be as large as $22.7 billion, rather than the $10.3 billion figure CRL estimates.[17]

Bernstein—the only analyst that does not profit from overdraft loan programs—provides the most complete and transparent explanation of how it calculated overdraft fee income. CRL's work closely tracks Bernstein's methodology. However, Bernstein apparently bases its calculation on only the fee income reported to the FDIC (and not to the NCUA) in 2004.[18] Had Bernstein included credit unions (but otherwise applied the same assumptions about the breakdown of fees), it would have arrived at a total estimate for overdraft loan fees of $9.7 to $11.2 billion.[19] CRL's estimate of $10 billion is within this range.

Several factors point to the continued growth of overdraft loan fees. First, more and more institutions are establishing fee-based overdraft loan programs. The number of institutions that have adopted these programs has grown dramatically in the past year. It is likely that this growth will accelerate now that federal regulators, through their regulatory guidance, have implicitly approved these programs.[20] Second, experience shows that the number of overdrafts at each institution that adopts an overdraft loan program will increase by 50% to 200%.[21] Third, it is reasonable to assume that the fee charged for each overdraft will continue to increase. The average overdraft fee rose 31% from 1998 to 2003.[22] Finally, the implementation of electronic check clearing, also known as Check 21, is expected to increase the number of overdrafts.[23] As a result, the annual amount of overdraft loan fees paid by borrowers in 2005 and beyond will exceed the $10 billion total that CRL has estimated for 2004, unless regulators intervene to protect families.

OVERDRAFT LOAN PROGRAMS: IMPACT ON BORROWERS

In nonbinding guidance addressed to financial institutions, federal regulators recently warned against allowing "excessive use" of overdraft loans.[24] The regulators thus acknowledged that overdraft loan programs can draw checking account holders into a perilous spiral of debt. Unfortunately, the regulators did not define "excessive use" and have not taken any concrete actions to save customers from the trap of repeated overdraft loan fees.

- Both industry participants and critics believe that the vast majority of overdraft loan fees come from providing recurring short-term credit to repeat users. An analyst at Sanford Bernstein has stated that 20% of the country's checking accounts generate 80% of overdraft fees.[25]

Another way of looking at the same issue is to count the number of times that individual borrowers are charged overdraft loan fees. Federal regulators do not require financial institutions to collect and report this type of information, but the data that is available is startling.

- The only statewide analysis of overdraft programs found that 20% to 27% of borrowers who are charged overdraft loan fees incur these fees at least two times per month (or at least 24 times per year); 9% to13% of users are charged these fees at least six times per month (or at least 72 times per year).[26]

- One institution reports that 77% of those who use overdraft loan programs overdraft two or more times a month and 33% of users overdraft six or more times per month.[27]

Paying high overdraft fees lowers borrowers' average monthly account balances. In fact, one institution has reported that, after it implemented its overdraft loan program, the number of accounts that remained negative for longer than 30 days increased by more than 400%.[28] Yet, regulators have failed to investigate the effect of overdraft loan programs on borrowers' average account balances or borrowers' wealth.

Evidence indicates that low- and moderate-income customers—who can least afford the triple- or quadruple-digit interest rates of overdraft loans—make up a disproportionate percentage of repeat users:

- Consultants encourage institutions to target low- and moderate-income customers for overdraft loan programs because these borrowers will generate more fees.[29]

- Many institutions include overdraft loans as an automatic feature of free-checking accounts that are marketed to low- and moderate-income people.[30]

- Younger borrowers, many of whom have low incomes and little experience at managing their finances, are also more likely to use overdraft loans on a regular basis.[31]

POLICY RECOMMENDATIONS

The following steps are essential to protecting all Americans with depository accounts:

- The Federal Reserve Board has acknowledged that overdraft coverage is credit in every sense of the term. It should refuse to exempt such programs from the Truth In Lending Act, which requires institutions to disclose the annual percentage rates for loans.[32]

- As is the case with other loan programs, any overdraft loan program should require that borrowers affirmatively and explicitly consent to participate.

- The customer should be warned that an ATM withdrawal or debit transaction will trigger a fee before any relevant transaction is processed and should be given an opportunity to cancel the transaction.

- Regulators should also require institutions to report data, such as overdraft fee income and how many borrowers are taking out multiple overdraft loans within a quarter, which could enable the regulators and the public to understand more clearly the impact of overdraft loan programs on borrowers.

- Repeated overdraft loans that result from more than one incident per quarter should be prohibited.

The Federal Reserve recently missed an opportunity to regulate overdraft loan programs consistent with how it regulates other loan programs. On May 19, 2005, the Federal Reserve issued regulations under the Truth in Savings Act that place limited restrictions on the ability of institutions to advertise overdraft loans in a manner that misleads the public.[33] Even while addressing the issue of advertising, the regulation does not even include a prohibition against advertising that encourages customers to overdraw their accounts. More broadly, the regulation does not require institutions to disclose an APR for these loans, nor does it include any of the substantive protections for borrowers recommended in this report, protections borrowers need regardless of whether an overdraft loan is advertised or not.

CONCLUSION

American families are paying more than **$10 billion** each year in overdraft loan fees.

Current data indicate that a significant portion of overdraft loan fees comes from borrowers who are caught in a downward spiral of debt. Early evidence suggests that repeat users pay most overdraft loan fees. Furthermore, the borrowers who pay most overdraft loan fees—in fact, who are targeted by many overdraft loan programs—are those least able to afford the excessive interest rates. Ultimately, low-income account holders who cannot keep up with overdraft loan fees may see their accounts closed and may join the ranks of the unbanked.

The Federal Reserve Board does not require financial institutions to disclose to borrowers the interest rates they pay on overdraft loans, nor has it issued binding rules governing the operation of overdraft loan programs.

CRL urges federal regulators to take steps to protect all checking account customers from abusive fees. Regulators should (1) require disclosure of annual percentage rates of overdraft loans, (2) require affirmative and explicit consent of the borrower for participation, (3) require adequate warnings when ATM and debit transactions will trigger fees, (4) require disclosure of data, and (5) prohibit repeated overdraft loans that result from more than one incident per quarter.

In this burgeoning market, financial institutions must be held accountable when they take advantage of their customers with an abusive high-cost, short-term loan that is hidden from view.

About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, the nation's largest community development financial institution.

For additional information, please visit our website at **www.responsiblelending.org**.

APPENDIX

Industry estimates

Sanford Bernstein calculates overdraft and NSF fees as a percentage of service charge income. Bernstein estimates that these fees comprise about one-third to one-half of all service charge income, or $12 to $14 billion in 2004.[34] Bernstein then estimates that 67% of overdraft and NSF income is comprised of overdraft loans. Applying these percentages to $12 to $14 billion, Bernstein concludes that $8 to $9 billion of overdraft fees are paid per year.[35]

Bretton Woods estimates that 49% of all service charge income is NSF and overdraft fees and, based on 2003 data, concludes that NSF and overdraft fees were $16 billion.[36] Officials from Brenton Woods have publicly stated that overdraft fees represent at least 50% of NSF and overdraft fees combined.[37] Bretton Woods' estimates would lead to the conclusion that borrowers paid at least $8 billion in overdraft fees in 2003.

However, both Bernstein and Bretton Woods appear to use service charge income from FDIC-insured banks and thrifts only. As a result, they fail to include overdraft loan fees paid to credit unions.[38] One explanation for the lower number is that Bernstein and Bretton Woods were analyzing the market for different purposes than CRL and omitted the NCUA data from their calculations.

Sheshunoff apparently has not released a formal study on the amount of overdraft loan fees paid. However, officials from Sheshunoff have been quoted as stating that overdraft and NSF fees are 70% of service charge income. Sheshunoff does not break out overdraft fees from NSF fees. However, applying the 50% to 67% range used by Bernstein and Bretton Woods to its calculation of the amount of NSF and overdraft fees combined would lead to a conclusion that borrowers paid anywhere from $13.3 to $17.8 billion in overdraft loan fees last year.[39]

Using a combination of publicly available and proprietary data,[40] Moebs has estimated that NSF and overdraft loan fees combined were $33 billion in 2003. Moebs has not published its methodology. However, $33 billion was 89% of 2003 service charge income. If we used Moebs' number for estimating overdraft fees— again assuming that overdraft fees are 50-67% of the NSF/overdraft fee category—then we would estimate that overdraft fees range from $16.9 billion to $22.7 billion.

Alternative Computations of the Amount of Overdraft Loan Fees

Using analysts' market assumptions and the amount of service charge income reported by FDIC and NCUA, the overdraft loan market could be anywhere from $7.2 to $22.6 billion. Below are four different computations of the size of the overdraft loan market using data taken from the analysts named above as the starting points. The estimate of the size of NSF and overdraft fees changes in each alternative. The range of overdraft fees as a percentage of NSF and overdraft fees, however, is fixed at 50% to 67%. The result is a range of estimates that differs from the analysts' own conclusions. For example, Bernstein estimates that overdraft fees are 67% of NSF and overdraft fees combined, but for illustrative purposes we calculate a range that includes a lower number based on Bretton Woods' 50% estimate.

Table A1. Estimated Overdraft Loan Fees: Comparison of Alternative Calculations (Based on Industry Estimates) to CRL Estimate

Basis of Alternative Calculation*	2004 Service Charge Fees (billions)	Est. % of Service Charges Attributable to OD/NSF Fees	Est. 2004 OD/NSF Fees (billions)	% OD/NSF Fees Due to Overdraft Only	Est. 2004 Overdraft Fees (billions)
Moebs $33 billion estimated OD/NSF fees (adjusted to $33.8B for 2004)**	$38	89%	**<u>$33.8</u>**	50%-67%	$16.9-22.7
Sheshunoff 70% of service charges attributable to OD/NSF fees	$38	**<u>70%</u>**	$26.6	50%-67%	$13.3-17.8
Bretton Woods 49% of service charges attributable to OD/NSF fees	$38	**<u>49%</u>**	$18.6	50%-67%	$9.3-12.5
Bernstein 38-44% of service charges attributable to OD/NSF fees	$38	**<u>38-44%</u>**	$14.4-16.7	50%-67%	$7.2-11.2
CRL Estimate	**$38**	**45%**	**$17.1**	**60%**	**$10.3**

* The figure used as the basis for calculation is indicated by bold, underlined text in each row.
** Moebs estimated that NSF and overdraft loan fees combined were $33 billion in 2003. $33 billion was 89% of 2003 service charge income. The 2003 figure was adjusted to $33.8B for 2004.

Notes

[1] CRL suggests grouping overdrafts as a result of a single incident, even if a number of overdrafts follow from this incident, because one mistake, such as a missed deposit, can cause multiple overdrafts within a short time frame before the customer realizes the mistake.

[2] For an analysis of the Federal Reserve Board's regulations and the alleged loopholes exploited by lenders, see CRL's comment to the Federal Reserve Board at http://www.responsiblelending.org/pdfs/Comment-FedFDIC-OverdraftTILA.pdf.

[3] NSF fees are fees assessed when a check is written against an account with insufficient funds to cover the check. The institution charges the fee and does not pay the check.

[4] FDIC reported $32.8 billion in service charge income in 2004. *See* 2004 FDIC Statistics on Depository Institutions, at http://www2.fdic.gov/sdi/rpt_financial.asp. NCUA reported that credit unions received $5 billion in fee income. *See* Consolidated Balance Sheet, at http://www.ncua.gov/foia/foia.htm. For purposes of its estimate, CRL rounded the amount of service charge income to the nearest billion.

[5] The first three are research and consulting firms. Of these, Bretton Woods has a "strategic partnership" with Strunk, a vendor of overdraft loan programs, and Moebs and Sheshunoff offer financial institutions their own overdraft loan programs. Sanford Bernstein is an investment research service.

[6] Moebs is not included in this chart because it has not publicly adopted a conclusion about NSF and overdraft fees as a percentage of service charge income.

[7] Howard Mason, *Fed Caution on Active Marketing of Bounce Protection; Industry Deposit Service Charges May Fall 6%*, Bernstein Research Call, February 22, 2005, p. 2. (OD and NSF is 38% of service charge income). Howard Mason, *Impact of Regulatory Best Practices on Bounce Protection Services and NSF Fees*, Bernstein Research Call, February 17, 2005, p. 1 (OD and NSF are approximately half of service charge income). Although Bernstein stated that overdraft and NSF fees are approximately half of all service charge income, later reports suggest that Bernstein estimated the top end of its range as 44%. *See* Footnote 12 *infra*.

[8] *Payday Loans and Similar Short-Term Advance Facilities*, Bretton Woods, October 2004, p. 8.

[9] John Reosti, *Working Hard to Keep Even Little Accounts*, American Banker, November 24, 2004 Vol. 169, No. 226 (quoting David Furman of Sheshunoff Management Services).

[10] *Presentation to the Federal Financial Institutions Examination Council*, Moebs Services, p. 1.

[11] Bill Stoneman, *Sizing NSF-related Fees*, BAI Banking Strategies, January/February 2005, at http://www.bai.org/bankingstrategies/2005-jan-feb/sizing/index.asp.

[12] Howard Mason, *The Criminal Risk of Actively-Marketed Bounce Protection Programs*, Bernstein Research Call, February 18, 2005, p. 1. As explained below, Bernstein used a lower dollar figure for total deposit service charge income, possibly because the scope of its report did not include credit unions.

[13] Bretton Woods, p. 8. As explained below, Bretton Woods used a lower dollar figure for total deposit service charge income, possibly because the scope of its report did not include credit unions.

[14] Moebs and Sheshunoff are not included in the chart because they have not publicly adopted a conclusion about overdraft fees' share of NSF and overdraft income.

[15] Howard Mason, *The Criminal Risk of Actively-Marketed Bounce Protection Programs*, Bernstein Research Call, February 18, 2005; Bruce Mohl, *Banks Rapped on Cost of Bounce Protection*, Boston Globe, February 23, 2005.

[16] Mike Flores of Bretton Woods speaking at Community Financial Services Association of America Annual Conference, March 2-5, 2005, Hollywood , FL.

[17] The appendix also contains a more detailed discussion of the analysts' assumptions and calculations, as well as alternative projections of market size based on the analysts' own data points.

[18] Bernstein's starting point of $32 billion in 2004 total service charge income approximates the number reported to the FDIC in 2004, which was $32.7 billion *See* 2004 FDIC Statistics on Depository Institutions, at http://www2.fdic.gov/sdi/rpt_financial.asp.

[19] NCUA reported that credit unions received $5 billion in fee income, *see* Consolidated Balance Sheet, at http://www.ncua.gov/foia/foia.htm, which would bring Bernstein close to the $38 billion figure used by CRL.

[20] CRL estimates that the number of institutions with overdraft loan programs designed by outside vendors increased by 43% in 2003. *See* Business Wire, *Leading Vendor Warns Consumers: "Be Selective" on Overdraft Programs*; *Room for Improvement Exists,* 4 Dec. 2003, at

http://www.findarticles.com/p/articles/mi_m0EIN/is_2003_Dec_4/ai_110919054; Laura Thompson, *Bank Overdraft Programs Rankle Consumer Groups*, American Banker, May 20, 2003 (number of Strunk's clients has tripled in the last two years to 660). http://www.strunklp.com/services.asp?id=127229&page=4 (data on the number of Strunk clients); Neil Christy, *To Fee or Not to Fee*, Bank Director Magazine, 2nd Quarter 2002); http://www.pinnaclefinancialstrategies.com/products/overdraft/creditunions/benefits.html (current number of pinnacle clients)**.** *See also Joint Guidance on Overdraft Protection Programs*, 70 FR 9127 (February 24, 2005).

[21] "Achieve a fee income increase of up to 400% within four months." *Overdraft Privilege Service: A Win-Win Solution to Generating Revenue While Building Customer Loyalty*, at www.strunklp.com, click on "newsletters and announcements" then click "articles and announcements" then click on the title of the article, last viewed April 18, 2005. *KYCUL Endorses Floyd & Associates for Overdraft Privilege Program*, September 21, 2004, p2. available at http://www.jmfa.com/%5Cuploads%5Ccontent%5C115200511857.pdf.

[22] The average fee charged for overdrafts increased 30.7%, or over $5, to $22.50 from 1998 to 2003. Federal Reserve Bulletin, *Retail Fees of Depository Institutions, 1997-2001*, September 2002, at http://www.federalreserve.gov/pubs/bullentin/2003/0909lead.pdf; Stoneman, *Sizing NSF-related Fees* by Bill Stoneman, BAI Banking Strategies, January/February 2005, at http://www.bai.org/bankingstrategies/2005-jan-feb/sizing/index.asp.

[23] One consultant has predicted that Check 21 will lead to an additional seven million overdrafts per month and, therefore, to an additional $1.34 billion in overdraft loan fees per year. Ray Martin, *Six Tips for Coping with the New Check Clearing Rules*, CBS Market Watch, September 28, 2004, http://www.marketwatch.com. The Federal Check Clearing for the 21st Century Act, or Check 21, allows institutions to change how they process and clear paper checks. Check 21 allows institutions to create an electronic "substitute check" rather than transmitting a paper check. Although consumers' checks will be clearing faster, institutions are not required to process consumers' deposits faster. As a result, more overdrafts are expected.

[24] *Joint Guidance on Overdraft Protection Programs*, 70 FR 9127, 9132 (February 24, 2005).

[25] Andrew Bary, *The 1,000% Solution: A Crackdown on Astronomical Fees for Overdrafts Could Squeeze Banks*, Barron's, February 28, 2005.

[26] Washington State Department of Financial Institutions, *Overdraft Protection Programs*, September 19, 2003, at http://www.dfi.wa.gov/news/Legislative%20report.pdf.

[27] Information on file with the authors.

[28] Information on file with the authors.

[29] Ralph Haberfied, *Breaking the $200 Barrier: With the Right Strategy That's How Much a Bank Can Generate in Fee's Per Account*, Bankstocks.com, September 25, 2001, at http://www.bankstocks.com/article.asp?id=425 (overdraft fees are maximized by opening in branches in supermarkets that service low- and moderate-income families); Alex Berenson, *Some Banks Encourage Overdrafts, Reaping Profit*, The New York Times, January 22, 2003 (quoting consultant stating that institutions will have twice as much overdraft activity in areas of high unemployment).

[30] John M. Floyd, *Overdraft Program Well Worth the Effort, If Run Responsibly*, American Banker, February 7, 2003.

[31] USA Federal Credit Union found that one-fourth of its overdraft loan users are under age 25. *See* Mary Cunningham, *Why Our Credit Union Has Wrestled with Realities of 'Courtesy Pay'*, Credit Union Journal, January 17, 2005.

[32] Institutions that cover overdrafts on a truly occasional, ad hoc basis should not be required to make these disclosures. For an analysis of the Federal Reserve Board's regulations and the alleged loopholes exploited by lenders, see CRL's comment to the Federal Reserve Board at http://www.responsiblelending.org/pdfs/Comment-FedFDIC-OverdraftTILA.pdf.

[33] Truth in Savings, 12 CFR Part 230, at http://www.federalreserve.gov/BoardDocs/Press/bcreg/2005/20050519/attachment.pdf.

[34] Howard Mason, *The Criminal Risk of Actively-Marketed Bounce Protection Programs*, Bernstein Research Call, February 18, 2005, at 1.

[35] Bruce Mohl, *Banks Rapped on Cost of Bounce Protection*, Boston Globe, February 23, 2005.

[36] Bretton Woods, at 8.

[37] Mike Flores of Bretton Woods speaking at Community Financial Services Association of America Annual Conference, March 2-5, 2005, Hollywood, FL.

[38] Bernstein estimates that 2004 service charge income was only $32 billion. However, the total amount of service charge income reported to the FDIC by banks and thrifts alone was $33 billion. An additional $5 billion in service charge income was reported to the NCUA by credit unions. Bretton Woods estimates that 2003 service charge income was $33 billion. However, in 2003, the FDIC reported $32.6 billion in service charge income, while the NCUA reported an additional $4.3 billion in service charge income. 2003 FDIC Statistics on Depository Institutions, at http://www2.fdic.gov/sdi/rpt_financial.asp; NCUA Consolidated Balance Sheet, at http://www.ncua.gov/foia/foia.htm.

[39] At another point in time, Sheshunoff officials stated that customers paid $22 billion in NSF and overdraft fees in 2003, which would have been 60% of service charge income in 2003. Bill Stoneman, *Sizing NSF-related Fees*, BAI Banking Strategies, January/February 2005, at http://www.bai.org/bankingstrategies/2005-jan-feb/sizing/index.asp. Using that data point to calculate overdraft fees, based on the 50%-67% assumption, would lead to the conclusion that borrowers paid $11.4 billion to $15.3 billion in overdraft fees in 2003.

[40] Moebs is the economic research firm that has been selected by the Federal Reserve Board to provide the data for the annual report to *Congress on Retail Services and Fees.* Moebs also advises financial institutions on how to implement overdraft loan programs. Although CRL has been unable to review it, the Moebs' data set apparently provides more detail on fees than is publicly available.